

No. 16238 ✓

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United States  
Court of Appeals  
for the Ninth Circuit

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ANTHONY FRISONE, Appellant,  
vs.  
UNITED STATES OF AMERICA,  
Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
Southern District of California,  
Central Division

FILED

FEB 25 1959

PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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\* Page numbers appearing at bottom of page of Original Transcript of Record.



United States District Court, Southern District  
of California, Central Division

September, 1957, Grand Jury

No. 26307 CD

UNITED STATES OF AMERICA, Plaintiff,

vs.

ANTHONY FRISONE, and NORA MATHIS  
FRISONE, Defendants.

### INDICTMENT

[U.S.C., Title 18, Sec. 1621—Perjury]

The grand jury charges:

#### Count One

[U.S.C., Title 18, Sec. 1621]

##### I.

On or about March 26, 1957, in Los Angeles County, California, within the Central Division of the Southern District of California, the trial of the case of United States of America v. Anthony Frisone, Cr. #25580-CD, was commenced in the United States District Court for the Southern District of California, Central Division, before the Honorable Ernest A. Tolin, Judge of said Court, sitting in the City of Los Angeles and before a jury duly impaneled to try said case.

##### II.

During the course of said trial and on or about

the said March 26, 1957, the defendant Nora Mathis Frisone appeared as a [2] witness and was called to the stand to testify on behalf of the defendant in said case of United States of America v. Anthony Frisone, Cr. #25580-CD. Said defendant Nora Mathis Frisone was duly sworn in open court, by Wayne E. Payne, the Deputy Clerk of said Court, who was then and there competent authority to administer an oath to said defendant Nora Mathis Frisone in said Court and in said case and the defendant Nora Mathis Frisone then and there swore upon oath to testify the truth, the whole truth, and nothing but the truth, in the matter then on trial. The said defendant Nora Mathis Frisone did thereafter take the witness stand and testify under oath in said case at the time and place aforesaid and while so testifying under oath, said defendant Nora Mathis Frisone did knowingly, wilfully and contrary to said oath, testify falsely in respect to material matters of said case in the answers made by her in response to questions put to her.

### III.

Said defendant Nora Mathis Frisone did so testify as follows:

“Q. Nora, did you work in the house Mi Rancho at Rosarita Beach?

A. I was there one night.”

(Reporter’s transcript, pages 76, 77.)

\* \* \* \* \*

“Q. Do you recall seeing Anthony Frisone at Mi Rancho?           A. No, I do not.

Q. Can you state definitely at the time that you were there that he was not there?

A. Yes, I can.

Q. Then it is your testimony that he was not there? A. I did not see him there.

Q. You were, you say, at Mi Rancho for one night? A. Yes, I was.”

(Reporter's Transcript, page 77.) [3]

#### IV.

In truth and in fact, as the defendant Nora Mathis Frisone well knew at the time of her so testifying, the occasion of her being at Mi Rancho at Rosarita Beach, in the Republic of Mexico, at the time in question, was on or about December 28, 1954, and the defendant Nora Mathis Frisone saw the defendant Anthony Frisone at said time and at said location; both defendants Nora Mathis Frisone and Anthony Frisone participated in and were present at an opening celebration of the said Mi Rancho at the time and place aforesaid, and both said defendants Nora Mathis Frisone and Anthony Frisone engaged in conversations at the time and place aforesaid.

#### V.

The aforesaid questions were asked and the testimony of the defendant Nora Mathis Frisone hereinbefore set forth were material to the proceedings then being conducted in the case of United States of America v. Anthony Frisone, Cr. #25580-CD, heard in the United States District Court for the Southern District of California, Central Division,

before the Honorable Ernest A. Tolin and a jury duly impanelled, and the whole of the afore-quoted questions and answers were material to a proper and just decision in said case, which case concerned whether or not the defendant Anthony Frisone was guilty of transporting, on or about December 27, 1954, a woman in foreign commerce for prostitution, debauchery, and other immoral purposes in violation of the provisions of Title 18, Section 2421, of the United States Code. [4]

### Count Two

[U.S.C., Title 18, Sec. 1621]

#### I.

The grand jury incorporates by reference thereto and realleges as if again set forth herein all of Paragraphs I and II of Count One of this indictment; and further alleges that the defendant Nora Mathis Frisone, at the time and place aforesaid and under the circumstances aforesaid, further testified as follows:

“Q. (By Mr. Cantillon): When was that, approximately?

A. That was in the spring and summer of 1954.

Q. Did you know Mr. Frisone at that time?

A. No, I did not.”

(Reporter’s transcript, page 65.)

\* \* \* \* \*

“Q. (By Mr. Cantillon): Now, sometime in the fall of 1954 did Ginger take up a residence in San Diego County? A. Yes.

Q. And did you go to that residence?

A. Yes, I was there.”

(Reporter’s transcript, pages 68, 69.)

\* \* \* \* \*

“Q. (By Mr. Cantillon): Did you know Mr. Frisone during this period of time while you were operating out of Ginger’s house in San Diego as a prostitute? A. Casually.

Q. When you say ‘casually’ what do you mean by that?

A. I think I had met him at the La Madelon where he was working as a bartender.

Q. Had you ever been out with him socially or dated him? [5]

A. No, I don’t think so.”

(Reporter’s transcript, pages 69, 70.)

\* \* \* \* \*

“Q. Isn’t it a fact that on or about the 27th or 28th of December of 1954 that Anthony Frisone drove you across the Mexican border to Tijuana?

A. It is not a fact.

Q. You would say that it is not true, then?

A. It is not true.

Q. Do you say that you knew the defendant Frisone only casually? A. Yes.

Q. When did your acquaintance become more intimate? A. Two or three months later.

Q. Sometime early in 1955?

A. Yes.”

(Reporter’s transcript, page 76.)

\* \* \* \* \*

“Q. It is your testimony, is it not, that Mr. Fri-

sone was only casually known to you during the summer of 1954?           A. That is right."

(Reporter's transcript, page 83.)

## II.

In truth and in fact, as the defendant Nora Mathis Frisone well knew at the time of her so testifying, the said defendant Nora Mathis Frisone knew and was well acquainted with defendant Anthony Frisone in the summer of 1954, she had been frequently in his company during the summer of 1954, and during said period of time they met and accompanied each other on social occasions; and that on or about September 17, 1954, said defendant [6] Nora Mathis Frisone and defendant Anthony Frisone lived together in Los Angeles, California, as man and wife, continuing to live thereafter in such relationship for the remainder of the year 1954.

## III.

The aforesaid questions were asked and the testimony of the defendant Nora Mathis Frisone hereinbefore set forth were material to the proceedings then being conducted in the case of United States of America v. Anthony Frisone, Cr. #25580-CD, heard in the United States District Court for the Southern District of California, Central Division, before the Honorable Ernest A. Tolin and a jury duly impanelled, and the whole of the afore-quoted questions and answers were material to a proper and just decision in said case, which case concerned whether or not the defendant Anthony Frisone was



guilty of transporting, on or about December 27, 1954, a woman in foreign commerce for prostitution, debauchery, and other immoral purposes in violation of the provisions of Title 18, Section 2421, of the United States Code. [7]

Count Three

[U.S.C., Title 18, Sec. 1621]

I.

The grand jury incorporates by reference thereto and realleges as if set forth herein in full all the allegations in Paragraph I of Count One of this indictment:

II.

During the course of said trial and on or about said March 26, 1957, the defendant Anthony Frisone appeared as a witness and was called to the stand to testify in his own behalf. Said defendant Anthony Frisone was duly sworn in open court by Wayne E. Payne, a deputy clerk of said Court, who was then and there competent authority to administer an oath to said defendant in said Court and in said case, and the defendant Anthony Frisone then and there swore upon oath to testify to the truth, the whole truth and nothing but the truth, in the matter then on trial. The said defendant Anthony Frisone did thereafter take the witness stand and testify under oath in said case at the time and place aforesaid and while so testifying under oath, said defendant Anthony Frisone did knowingly, wilfully and contrary to said oath testify falsely in respect to material matters of said case in the an-

swers made by him in response to questions put to him.

### III.

Said defendant Anthony Frisone did so testify as follows:

“Q. Did you ever have an occasion at any time to go to Mr. DiLeo’s establishment in Mexico at Rosarita Beach?      A. Yes, I did. I——

Q. When was that, sir?

A. I think it was right after the holidays. I can’t remember just exactly which day it was. I believe [8] it was a day off or I was due for a day off after the new year had started, and I drove down—well, Mr. DiLeo had called me and told me he was in operation and that would I come down and look it over and see if—bring the gambling into the club, so I said, ‘Well, I’ll see if I can come down and look at over.’”

(Reporter’s transcript, pages 102, 103.)

\* \* \* \* \*

“Q. Isn’t it true that you actually spent some few days at Mi Rancho between Christmas and New Year’s of 1954?      A. It is not.”

(Reporter’s transcript, page 145.)

### IV.

That in truth and in fact, as the defendant Anthony Frisone well knew at the time of his so testifying, the defendant Anthony Frisone was present at Mi Rancho, Rosarita Beach, Republic of Mexico, on or about December 28, 1954, on the occasion of the opening of said establishment, and remained

present for at least one day following said date of opening.

V.

The aforesaid questions were asked and the testimony of the defendant Anthony Frisone hereinbefore set forth were material to the proceedings then being conducted in the case of United States of America v. Anthony Frisone, Cr. #25580-CD, heard in the United States District Court for the Southern District of California, Central Division, before the Honorable Ernest A. Tolin and a jury duly impanelled, and the whole of the afore-quoted questions and answers were material to a proper and just decision in said case, which case concerned whether or not the defendant [9] Anthony Frisone was guilty of transporting, on or about December 27, 1954, a woman in foreign commerce for prostitution, debauchery, and other immoral purposes in violation of the provisions of Title 18, Section 2421, of the United States Code. [10]

Count Four

[U.S.C., Title 18, Sec. 1621]

I.

The grand jury incorporates by reference thereto and realleges as if set forth herein in full all the allegations in Paragraph I of Count One of this indictment and all the allegations in Paragraph II of Count Three of this indictment.

II.

And the grand jury further alleges that said de-

fendant Anthony Frisone further testified at the time and place aforesaid and under the circumstances aforesaid, as follows:

“Q. Directing your attention to 1954, and particularly the month of December, what was your occupation at that time?

A. At that time I was employed as a bartender by the La Madelon, Inc. here in Los Angeles.”

(Reporter’s transcript, page 96.)

\* \* \* \* \*

“Q. Now, where were you between the week of from December 24, 1954, to January 1, 1955?

A. Well, during the evenings I was employed, still employed by the La Madelon as a bartender, and I went to work generally, I think it was about 9:00 o’clock in the evening or might have been one or two evenings a week that I would go in at 8:00, which we called an early shift, but Christmas—no, I worked Christmas, New Year’s day, which would be January the 1st of 1955, I was at my mother’s house in San Bernardino. The rest of the time I worked.”

(Reporter’s transcript, page 102.) [11]

\* \* \* \* \*

“Q. I see. Now, you worked then, Mr. Frisone, at La Madelon from sometime at the end of August or sometime in August of 1954 until sometime in March of 1955?           A. March or April.

Q. And you recall definitely now that Christmas Day you worked at La Madelon?

A. I don’t know about Christmas Day.

Q. Christmas night?

A. Christmas night, yes.

Q. Do you recall that definitely? A. Yes.

Q. Could it have been Christmas Eve?

A. Well, wait a minute. Let's get this straight. When you say Christmas night, which do you mean, Christmas Eve or Christmas Day night?

Q. I take it in the common meaning, sir. I mean the night of Christmas Day is Christmas night.

A. No. I couldn't swear positively, but I don't think that I worked.

Q. You don't think that you worked on Christmas Eve? A. No, Christmas Day night.

Q. You didn't work on Christmas Day night?

A. That's right.

Q. Did you work the following night?

A. Yes, sir.

Q. You have an independent recollection of working that night?

A. Well, I wouldn't say an independent recollection, but I worked throughout the week.

Q. Can you state positively that you worked on that night in question? [12]

A. Yes, I can state positively.

Q. And the next day would be the 27th of December. Do you have an independent recollection of having worked that night at La Madelon?

A. I worked throughout the week. I didn't take any extra days off other than I had coming to me.

Q. Do you have an independent recollection of having worked at the La Madelon on the night of December 27, 1954? A. Yes.

Q. You can say definitely?

A. I would say that I worked there on December 19th—27, 1954.

Q. You can say definitely that you did?

A. As best as I can remember.

Q. I appreciate your difficulty, but I am asking, can you remember definitely?

A. When you say 'definitely' just exactly what do you mean? That is not very clear, by your definition of 'definitely'; might be a little different than mine.

Q. Do you have any independent recollection at this time of having worked on that night?

A. Yes.

Q. Do you have an independent recollection of having worked the night of December 28, 1954?

A. Yes.

Q. Can you say definitely that you did?

A. Yes.

Q. Do you have an independent recollection of having worked the night of December 29, 1954?

A. Yes. [13]

Q. You can say definitely that you worked that night?

A. Yes, I can say definitely I worked that night.

Q. Do you have any independent recollection of having worked the night of December 30, 1954?

A. Yes.

Q. Definitely you can say that you did?

A. I definitely can say that I worked December 30th, which would be New Year's Eve of 1954.

Q. I am sorry. I thought December 31st would be.

A. If December 30th was the New Year's Eve, that's the day I worked and I worked the day before it, so that makes it a definite proposition about December 30th."

(Reporter's transcript, pages 126, 127, 128, 129.)

### III.

That in truth and in fact, as the defendant Anthony Frisone well knew at the time of his so testifying, the defendant Anthony Frisone was not employed by La Madelon, Inc. at any time during the month of December, 1954.

### IV.

The aforesaid questions were asked and the testimony of the defendant Anthony Frisone hereinbefore set forth were material to the proceedings then being conducted in the case of United States of America v. Anthony Frisone, Cr. #25580-CD, heard in the United States District Court for the Southern District of California, Central Division, before the Honorable Ernest A. Tolin and a jury duly impanelled, and the whole of the afore-quoted questions and answers were material to a proper and just decision in said case, which case concerned whether or not the defendant Anthony Frisone was guilty of transporting, on or about December 27, 1954, a woman in foreign commerce for prostitution, debauchery, [14] and other immoral purposes in violation of the provisions of Title 18, Section 2421, of the United States Code. [15]

## Count Five

[U.S.C., Title 18, Sec. 1621]

## I.

The grand jury incorporates by reference thereto and realleges as if set forth herein in full all the allegations in Paragraph I of Count One of this indictment and all the allegations in Paragraph II of Count Three of this indictment.

## II.

And the grand jury further alleges that said defendant Anthony Frisone further testified at the time and place aforesaid, and under the circumstances aforesaid, as follows:

“Q. Let me ask you this: At the time that this took place in December of 1954, did you know your present wife, Nora, at that time?

A. I had met her. I had seen her. I think I had met her. I had seen her.

Q. In December of 1954?

A. Somewhere about that time.

Q. And you would say then that around the first of the year of 1955 your acquaintance with her was casual?

A. No. After the first of the year of 1955—I don't know what the—exactly the date, but we started going out together.”

(Reporter's transcript, page 138).

\* \* \* \* \*

“Q. In mid-December of 1954, did you know your present wife at that time?

A. I was acquainted with her. I had seen her.



Q. Had you ever dated her at that time?

A. No.

Q. Had she ever been in your automobile at that time? [16]

A. I loaned my car out to several people while I was working. I couldn't say whether she had been or had not been. I don't know who took——

Q. Had she been in it while you were with her?

A. No, not while——”

(Reporter's transcript, page 140.)

### III.

In truth and in fact, as the defendant Anthony Frisone well knew at the time of his so testifying, the said Anthony Frisone knew and was well acquainted with the defendant Nora Mathis Frisone in the summer of 1954, he having been frequently in her company during the summer of 1954 and during the said period they met and accompanied each other on social occasions; and that on or about September 17, 1954, said defendants Anthony Frisone and Nora Mathis Frisone lived together in Los Angeles, California, as man and wife, continuing to live thereafter in such relationship for the remainder of the year of 1954.

### IV.

The aforesaid questions were asked and the testimony of the defendant Anthony Frisone hereinbefore set forth were material to the proceedings then being conducted in the case of *United States of America v. Anthony Frisone*, Cr. #25580-CD,

heard in the United States District Court for the Southern District of California, Central Division, before the Honorable Ernest A. Tolin and a jury duly impanelled, and the whole of the afore-quoted questions and answers were material to a proper and just decision in said case, which case concerned whether or not the defendant Anthony Frisone was guilty of transporting, on or about December 27, 1954, a woman in foreign commerce for prostitution, debauchery and other immoral purposes in violation of the provisions of Title 18, Section 2421, of the United States Code. [17]

Count Six

[U.S.C., Title 18, Sec. 1621]

I.

The grand jury incorporates by reference thereto and realleges as if set forth herein in full all the allegations in Paragraph I of Count One of this indictment and all the allegations in Paragraph II of Count Three of this indictment.

II.

And the grand jury further alleges that said defendant Anthony Frisone further testified at the time and place aforesaid, and under the circumstances aforesaid, as follows:

“Q. I am going to ask you, Mr. Frisone, whether you remember a conversation at 1315 Wengert, Las Vegas, on June 22, 1956, between yourself and Special Agents Byron C. Wheeler and Leslie B. Deckman of the Federal Bureau of Investigation.

A. Yes, I remember a conversation with them.

Q. Did you at any time during that conversation mention when you had married your wife?

A. No, not to my knowledge. I mean, if I had to remember a conversation I have with everybody I have talked to, why——

Q. Is it not true that you told the agents I have just named, at that conversation, that you had married Nora Mathis Frisone in 1954 in Mexico?

A. It is not true.

Q. That is not true. You can state that positively?      A. I can state that positively.

Q. You did not tell them that?

A. I did not tell them that.”

(Reporter's transcript, page 139.) [18]

### III.

In truth and in fact, as the defendant Anthony Frisone well knew at the time of his so testifying, the defendant Anthony Frisone had said, in a conversation at Las Vegas, on June 22, 1956, between himself and Special Agents Byron C. Wheeler and Leslie B. Deckman of the Federal Bureau of Investigation, that he, the defendant Anthony Frisone, had married Nora Mathis Frisone in 1954 in Mexico.

### IV.

The aforesaid questions were asked and the testimony of the defendant Anthony Frisone hereinbefore set forth were material to the proceedings then being conducted in the case of *United States of America v. Anthony Frisone, Cr. #25580-CD*,

heard in the United States District Court for the Southern District of California, Central Division, before the Honorable Ernest A. Tolin and a jury duly impanelled, and the whole of the afore-quoted questions and answers were material to a proper and just decision in said case, which case concerned whether or not the defendant Anthony Frisone was guilty of transporting, on or about December 27, 1954, a woman in foreign commerce for prostitution, debauchery, and other immoral purposes in violation of the provisions of Title 18, Section 2421, of the United States Code.

A True Bill.

/s/ E. J. PRUD'HOMME,  
Foreman.

/s/ LAUGHLIN E. WATERS,  
United States Attorney. [19]

[Endorsed]: Filed October 30, 1957.

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[Title of District Court and Cause.]

### MINUTES OF THE COURT

Date: Dec. 2, 1957, at Los Angeles, Calif.

Present: Hon. Harry C. Westover, District Judge.

Deputy Clerk: Mary O. Smith. Reporter: S. J. Trainor.

U. S. Att'y, by Assistant U. S. Att'y: Peter J. Hughes.

Counsel for Defendants: James Cantillon.

Defendants present on bond. (Case 26212.)

Proceedings: For arraignment and plea of each defendant.

Both defendants are arraigned and state their true names are as set forth in the Indictment.

Defendant Anthony Frisone pleads not guilty to counts 3, 4, 5, and 6 of the (six counts) Indictment.

Defendant Nora Mathis Frisone pleads not guilty to counts 1 and 2.

Attorney Cantillon makes a statement.

It Is Ordered that cause is transferred to Judge Clarke for setting and for all further proceedings.

JOHN A. CHILDRESS,  
Clerk,

/s/ By MARY O. SMITH,  
Deputy Clerk. [21]

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[Title of District Court and Cause.]

### MINUTES OF THE COURT

Date: May 27, 1958, at Los Angeles, Calif.

Present: Hon. Leon R. Yankwich, District Judge; Deputy Clerk: Wm. A. White. Reporter: Marie Zellner.

U. S. Att'y, by Assistant U. S. Att'y: Robert J. Jensen.

Counsel for Defendants: James P. Cantillon.

Defendants present (on bond). #26212, on O/R) #26307.

Proceedings: For jury trial.

All parties present. It Is Ordered that Case No. 26,212-Cr. trail Case No. 26,307-Cr., and that jury trial proceed in the latter case.

Court orders that a jury be impaneled and trial proceed.

The following jurors, duly impaneled, are sworn to try this case:

1. John Pagliassotti, 2. Floss Tarr, 3. Harry A. Wembridge, 4. William R. Ellerman, 5. Margery H. Calvin, 6. Gene D. Whitfield, 7. Florence Beckelhymer, 8. Elsie M. Bakre, 9. Florence M. Child, 10. Rose G. Levy, 11. Norris E. Read, 12. Elizabeth A. Fox. 1st Alternate Juror: Rebecca Isaacs. 2nd Alternate Juror: Crene K. Dixon.

Further reading of the Indictment is waived.

At noon Court admonishes the jurors not to discuss this case and declares a recess.

At 2:01 p.m. Court reconvenes. All present as before. Both defendants and the jury and the two alternate jurors are present. Court orders trial proceed.

Attorney for Gov't makes opening statement to the jury.

Filed Government's requested jury instructions. Defendants reserve making opening statement.

Counsel for respective parties enter into preliminary stipulation of facts as to Case No. 25,880-Cr.

Court orders the reporter to make a copy of the stipulation as stated and that said copy will be marked as an exhibit in the case.

Gov't Ex. 1 is received into evidence.

Janet Frances Prideaux is called, sworn, and testifies for Gov't.

At 2:45 p.m. Court excuses the jury.

Court and counsel discuss a question of law.

At 3:11 p.m. Court recesses. At 3:28 p.m. Court reconvenes. All present as before. Both defendants and the jury and the two alternate jurors are present. Court orders trial proceed.

Witness Prideaux resumes the stand and testifies further on behalf of Gov't.

Norma Jean Scholes is called, sworn, and testifies for Gov't.

Paul Carmello is called, sworn, and testifies for Gov't.

Court admonishes the jurors not to discuss this cause and orders cause continued to May 28, 1958, 10 a.m., for further jury trial.

At 4:45 p.m. Court adjourns.

JOHN A. CHILDRESS,  
Clerk,

By WM. A. WHITE,  
Deputy Clerk. [38]

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[Title of District Court and Cause.]

### MINUTES OF THE COURT

Date: May 28, 1958, At: Los Angeles, Calif.

Present: Hon. Leon R. Yankwich, District Judge;  
Deputy Clerk: Wm. A. White; Reporter: Marie

Zellner; Counsel for Gov't.: Robert J. Jensen, Assistant U. S. Attorney; Counsel for Defendants: James P. Cantillon; Defendants present (on O/R).

Proceedings: For further jury trial. At 10:02 A.M. court convenes. All parties present. Defendants present. The jury and the two alternate jurors are present. Court orders trial proceed.

Stanley Mattoon is called, sworn, and testifies for Gov't.

Gov't Ex. 2, 3, 3-A, and 3-B are marked for ident.

At 10:40 A.M. Court admonishes the jurors not to discuss this cause and declares a recess. At 11 A.M. court reconvenes. All present as before, including the jury and the two alternate jurors.

Witness Mattoon resumes the stand and testifies further.

Gov't Ex. 2, 3-A, and 3-B are received in evidence.

Engia Smith is called, sworn, and testifies for Gov't.

Benjamin Smith is called, sworn, and testifies for Gov't.

John Govlya is called, sworn, and testifies for Gov't.

Gov't Ex. 4 and 5 are marked for ident.

Murray Podalski is called, sworn, and testifies for Gov't.

Gov't Ex. 4 and 5 are received into evidence.

At 12:10 P.M. Court reminds the jurors of the admonition heretofore given and declares a recess. At 2:05 P.M. court reconvenes. All present as before, including the jury and the two alternate jurors. Court orders trial proceed.



Frederick Buol is called, sworn, and testifies for Gov't.

Def'ts' Ex. A and B are marked for ident.

Charles M. Blalock and Byran C. Wheeler, respectively, are called, sworn, and testify for Gov't.

Def'ts' Ex. C is marked for ident.

Leslie B. Dieckman is called, sworn, and testifies for Gov't.

Defendant recalls Byran C. Wheeler, heretofore sworn as a witness for Gov't, and said witness testifies further.

Def'ts' Ex. C is received into evidence.

Gov't Ex. 6-A and 6-B are marked for ident.

It is ordered that Gov't Ex. 6-A and 6-B are received into evidence only as to the question of materiality to be considered by the Court.

At 2:56 P.M. Court reminds the jurors of the admonition heretofore given and declares a recess. At 3:25 P.M. court reconvenes. All counsel, defendants, and the jury and the two alternate jurors are present. Court orders trial proceed.

Counsel stipulate that certain testimony of the defendants from Exhibits 6-A and 6-B will be read to the jury, indicating which of defendant's testimony is being read, and as related to the particular counts of the Indictment.

Gov't rests with the reservation of re-opening the case as to Witness Mattoon and records of Le Madelon Inc. for further testimony.

At 3:50 P.M. Court reminds the jurors of the admonition heretofore given and excuses the jurors. Court remains in session.

Attorney for defendants argues motion for judgment of acquittal as to defendants Anthony Frisone and Nora Frisone as to the respective counts in which defendants are charged.

Court requests that attorney for Gov't argue in reply to defendants' argument to count 6 only, on motion for acquittal.

It Is Ordered that motion for judgment of acquittal is denied as to counts 1, 2, 3, 4, and 5 and said motion is granted as to defendant Anthony Frisone on count 6.

At 4:35 P.M. Court admonishes the jurors not to discuss this cause and Orders cause continued to May 29, 1958, 10 A.M. for further jury trial.

Court adjourns.

JOHN A. CHILDRESS,  
Clerk,

/s/ By WM. A. WHITE,  
Deputy Clerk. [39]

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[Title of District Court and Cause.]

### MINUTES OF THE COURT

Date: May 29, 1958. At: Los Angeles, Calif.

Present: Hon. Leon R. Yankwich, District Judge;  
Deputy Clerk: W. A. White; Reporter: Marie Zellner; U. S. Att'y., by Assistant U. S. Att'y.: Robert J. Jensen; Counsel for Defendant: James P. Cantillon. Defendants are present (on O/R).

Proceedings: Further Jury Trial:

Court convenes herein at 10:15 a.m. All parties,

including the defendants, the jury and two alternate jurors, are present and Court orders trial proceed. Stanley Mattvan, heretofore sworn, is recalled and testifies further. Govt's exhibit 7 is marked for identification. Defendant's exhibits D and E are marked for identification. Govt's exhibit 8 is marked for identification and 7 and 8 are admitted in evidence. Govt's exhibits 3-C and 3-D are marked for identification and later admitted in evidence. Government rests.

Defendant's exhibits D and E are admitted in evidence. Defendants move again for judgment of acquittal as to remaining counts and said motion is ordered denied. At 11:19 Court admonishes the jury and recesses. At 11:40 a.m. Court reconvenes. Appearances are as before and the jury and alternates as well. Court orders trial proceed. Attorney Cantillon makes opening statement to the jury. Thomas H. Ludlow, Jr. is called, sworn and testifies for the defendants. Defendants' exhibit F is marked for identification. Court reminds the jury of admonition previously given and declares a recess at Noon.

At 2:03 p.m. Court reconvenes, and all parties including the jury and alternates being present, the court orders trial proceed. Court's exhibit No. 1 is marked for identification (stipulation entered into at outset of trial). Leola Gerson is called, sworn and testifies for the defendants. Defendant Nora Mathis Frisone is called, sworn and testifies in her own behalf. Court recesses at 3:10 p.m. after court admonishes the jury.

Court reconvenes at 3:25 p.m. Counsel stipulate to presence of the jury. Court orders trial proceed. Witness Nora M. Frisone resumes the stand. Marcelle Edwards is called, sworn and testifies for the defendants. Anthony Frisone, defendant, is called, sworn and testifies in his own behalf. Court admonishes the jury and recesses at 4:30 p.m. It Is Ordered cause is continued to June 3, 1958 at 10:00 a.m. for further jury trial.

JOHN A. CHILDRESS,  
Clerk,

/s/ By WM. A. WHITE,  
Deputy Clerk. [40]

[Title of District Court and Cause.]

### MINUTES OF THE COURT

Date: June 3, 1958. At: Los Angeles, Calif.

Present: Hon. Leon R. Yankwich, District Judge;  
Deputy Clerk: L. Cunliffe; Reporter: Leslie L. Richter; U. S. Att'., by Assistant U. S. Att'.: Robert J. Jensen, Esq.; Counsel for Defendant: James P. Cantillon, Esq.; Defendants both present (on bond).

Proceedings: Further Jury Trial:

10:23 a.m.—Court convenes and all parties stipulate presence of jury and defendants.

Defendant witnesses Pat Caliendo, George A. Redman, Leo Frisone and Anthony Frisone are called, sworn and testify.

Court admonishes jury.

Defendant rests.

11 a.m.—Court admonishes jury and recesses.

11:15 a.m.—Court reconvenes and all parties stipulate presence of jury.

Defendant attorney moves to reopen case and court orders said motion granted.

Defendant Anthony Frisone, heretofore sworn, is recalled and testifies further in his own behalf.

Defendant's Exhibits G & H are identified and admitted in evidence.

Defendant finally rests.

Plaintiff witness Ann Elkind is called sworn and testifies and Plaintiff's Exhibits 9 & 9-A are identified and admitted in evidence.

11:40 a.m.—Government rests.

11:42 a.m.—Court admonishes jury who leave court room.

Out of hearing of jury, court and counsel confer.

Defendant attorney renews motions to strike Counts 1 to 5, separately and inclusively, for lack of evidence and also for directed verdict of acquittal.

Plaintiff attorney argues in opposition.

Court orders all motions denied.

Court rules on requested jury instructions.

12:10 p.m.—Court recesses.

2:05 p.m.—Court reconvenes with all parties, including jury, present.

U. S. Attorney Jensen makes opening argument from 2:05 p.m., to 2:33 p.m.

Defendant attorney argues from 2:33 p.m. to 3:08 p.m.

3:08 p.m.—Court admonishes jury and recesses.

3:22 p.m.—Court reconvenes and all parties stipulate presence of jury.

U.S. Attorney Jensen makes rebuttal argument from 3:22 p.m. to 3:43 p.m.

3:47 p.m.—Court admonishes jury and recesses until 10 a.m., June 4, 1958.

JOHN A. CHILDRESS,  
Clerk,

/s/ By L. CUNLIFFE,  
Deputy Clerk. [41]

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[Title of District Court and Cause.]

### MINUTES OF THE COURT

Date: June 4, 1958. At: Los Angeles, Calif.

Present: Hon. Leon R. Yankwich, District Judge;  
Deputy Clerk: L. Cunliffe; Reporter: Marie Zellner; U. S. Att'y., by Assistant U. S. Att'y.: Robert J. Jensen, Esq.; Counsel for Defendant: James P. Cantillon & Richard M. Cantillon; Defendants both present (on bond).

Proceedings: Further Jury Trial:

10:07 a.m.—Court convenes with all parties present.

Defendant attorney James P. Cantillon moves to associate his brother Attorney Richard M. Cantillon as counsel because of his unavoidable absence, and court orders said motion granted.

Court instructs jury as to the law applicable until 10:43 a.m.

Court and counsel confer at bar out of hearing of the jury re jury instructions.

Alternate jurors Rebecca Isaacs and Crene K. Dixon are excused, and discharged.

Al Kottner and Bessie M. Seyfriedt are sworn as jury bailiff and matron respectively.

10:57 a.m.—Jury retire to deliberate.

Defendant attorney R. M. Cantillon moves to withhold defendant's Exhibit "C" from the jury. Court denies said motion.

Filed jury instructions as given and refused.

11:05 a.m.—Jury returns to court on order of court and is instructed re election of foreman.

11:06 a.m.—Jury retire to deliberate further.

11:45 a.m. to 1:45 p.m.—Jury go to lunch at Government expenses and then resume deliberations.

5:28 p.m.—Jury return to court room & all parties stipulate their presence.

Court reads note from Jury Foreman to effect that jury cannot agree on a verdict as to any count. Mrs. Rose Levy (Juror No. 10) asks questions re definition of word "Casually." Defendant Attorney makes motion for mistrial. Motion denied. Court and counsel confer at bar out of hearing of jury re dictionary definition of word "Casually." Clerk, upon court's order, prepare written definition from Webster's Unabridged Dictionary of word "Casual," which is agreed to by both counsel and then submitted to jury.

6:05 p.m.—Jury retire to deliberate further.

7:20 p.m.—Jury return to courtroom. Court instructs jury foreman to complete blanks in verdict

forms, which is done. Verdict read that jury find defendant Anthony Frisone guilty as to Count 5, and unable to agree as to Counts 3 & 4, and as to defendant Nora Mathis Frisone, Not Guilty as to Count 2 and could not agree as to Count 1. Court orders matter referred to Probation Officer for pre-sentence report as to Defendant Anthony Frisone as to Count 5 and the matter continued to 2 p.m., June 30, 1958, for hearing on said report & for sentence as to Count 5 and disposition as to Counts 1, 3 & 4. Jury polled as to Guilty verdict Ct. 5.

Defendants to remain on bond already posted in Case No. 26212.

Court denies defendant's motion for dismissal as to Counts 1, 3 & 4.

7:40 p.m.—Court adjourns.

JOHN A. CHILDRESS,  
Clerk,

/s/ By L. CUNLIFFE,  
Deputy Clerk. [42]

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[Title of District Court and Cause.]

### JURY VERDICT

We, The Jury, in the above-entitled cause find that the defendant Anthony Frisone is—could not agree—as charged in Count Three of the Indictment, and that he is—could not agree—as charged in Count Four of the Indictment, and that he



is Guilty as charged in Count Five of the Indictment.

/s/ WILLIAM R. ELLERMAN,  
Foreman of the Jury.

Dated: This 4th day of June, 1958. [44]

[Endorsed]: Filed June 4, 1958.

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[Title of District Court and Cause.]

COURT'S INSTRUCTIONS TO THE JURY

Given:

/s/ LEON R. YANKWICH,  
Judge. [45]

The law of the United States permits a judge to comment on the facts in the case. Such comments are mere matters of opinion which the jury may disregard if they conflict with their own conclusions upon the facts. This for the reason that the jurors are the sole and exclusive judges of the facts in each case. However, it is not my custom to exercise this right. Nor shall I exercise it in the present case. I shall leave the determination of the facts in the case to you, satisfied as I am that you are fully capable of determining them without my aid. However, it is my duty, under the law, and my exclusive province, to instruct you as to the law that is applicable to the case, in order that you may render a general verdict upon the facts in the case, as determined by you, and the law as given you by me in these instructions. It would be a violation of your duty to attempt to determine

the law or to base a verdict upon any other view of the law than that given you by the court—a wrong for which the parties would have no remedy, because it is conclusively presumed by the court and all higher tribunals that you have acted in accordance with these instructions as you have been sworn to do. [46]

During the course of the trial, I have, at various times, asked questions of certain witnesses, including the defendants. My object in so doing was to bring out, in greater detail, certain facts not yet fully testified to by the particular witness. You are not to infer from the questions I asked that I have any opinion as to the facts to which the questions related. If, from those questions, you have made the inference that I have an opinion as to the particular facts to which the questions related, it is your right to treat it as an opinion, which you are at liberty to disregard in arriving at your own conclusion as to the particular facts or as to the other facts in the case. [47]

You are here for the purpose of trying the issues of fact that are presented by the allegations in the indictment and the plea of "Not guilty" of each of the defendants thereto. This duty you should perform uninfluenced by pity for the defendants or any of them, or by passion or prejudice on account of the nature of the charge against them. You are to be governed therefore solely by the evidence introduced in this trial, and the law as given you by the Court. The law will not permit jurors to be governed by mere sentiment, conjec-

ture, sympathy, passion or prejudice, public opinion, or public feeling. Both the public and the defendants have a right to demand, and they do so demand and expect, that you will carefully and dispassionately weigh and consider the evidence and the law of the case and give to each your conscientious judgment; and that you will reach a verdict that will be just to both sides, regardless of what the consequences may be. [48]

The offense with which the defendants are charged is Perjury.

In this connection, you are instructed that the indictment on file herein is a mere charge or accusation against the defendants, and is not any evidence of the defendants' guilt and no juror in this case should permit himself to be, to any extent, influenced against the defendants because or on account of such indictment on file.

It is the duty of the jury to decide whether the defendants or any of them be guilty of or not guilty of the offense charged, considering all the evidence submitted to you in the case.

The jury are the sole and exclusive judges of the effect and value of the evidence addressed to them and of the credibility of the witnesses who have testified in the case, and the character of the witnesses as shown by the evidence should be taken into consideration for the purpose of determining their credibility and the fact as to whether they have spoken the truth. And the jury may scrutinize not only the manner of witnesses while on the stand, their relation to the case, if any, but also their

degree of intelligence. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testified, his interest in the case, if any, or his bias or prejudice, if any, against one or any of the parties; by the character of his testimony, or by evidence affecting his character for truth, honesty or integrity or by contradictory evidence; and the jury are the exclusive judges of his credibility.

A witness may also be impeached by evidence that he made at other times, statements inconsistent with his [49] present testimony as to any matter material to the cause on trial.

A witness false in one part of his or her testimony is to be distrusted in others; that is to say, the jury may reject the whole of the testimony of a witness who has wilfully sworn falsely as to a material point; and the jury, being convinced that a witness has stated what was untrue, not as a result of mistake or inadvertence, but wilfully and with the design to deceive, must treat all of his or her testimony with distrust and suspicion, and reject all unless they shall be convinced that notwithstanding the base character of the witness, that he or she has, in other particulars, sworn to the truth.

In weighing the credibility of the witnesses who have testified during the course of this trial, you may consider whether any of the witnesses have suffered a prior conviction of a felony or an offense involving moral turpitude.

Such conviction you may consider in determining the credibility of the witness. If, notwithstand-

ing such conviction, you are satisfied that the testimony of the witness at the trial is true, you may give it full credit as to any matters to which it relates. [51]

The testimony of a witness is said to be corroborated when it is shown to correspond with the representation of some other witness, or to comport with some fact or facts otherwise known or established by the evidence.

You must not consider as evidence or law any statements, arguments, comments, or suggestions made by counsel during the trial. However, if counsel for either side have admitted, or stipulated to, the existence of any fact, you must consider it proved without further evidence.

You must not consider, for any purpose, any evidence offered and rejected, or which, after being received, has been stricken out by the court. You must decide the case solely upon the evidence before you and the inferences which you may deduce therefrom, as they are stated in these instructions, and upon the law, as given you in these instructions. [52]

There are two kinds of evidence by which the Government may sustain charges laid in an indictment—the one is known as direct and positive; the other, as indirect or circumstantial. Evidence is said to be direct and positive when the witnesses have testified of their own knowledge to matters having a direct bearing upon the issues in the case. Evidence is said to be indirect or circumstantial, on the other hand, when the witnesses testified to matters

having only an indirect or circumstantial relationship to the issues in the case.

While you may show what a man does by direct evidence of eye-witnesses, the only way you can show what he intends and believes or what his plans or purposes are, or were, is by circumstantial evidence.

The law requires that all the circumstances necessary to show guilt must, themselves, be shown by evidence beyond a reasonable doubt; that these circumstances must all be consistent with one another; that they must all be consistent with a defendant's guilt and that they must all be inconsistent with any reasonable theory or hypothesis except that of guilt.

If the circumstantial evidence measures up to all the foregoing requirements, it is the duty of the jury to return a verdict of guilty. If it fails to do so, in any one of such particulars, your verdict should be not guilty. [53]

While a defendant in a criminal action is not required to take the stand and testify, yet if he does so, his credibility and the value and effect of his evidence are to be weighed and determined by the same rules as the credibility and effect and value of the evidence of any other witness is determined. And the tests I have given you for determining the credibility of witnesses must be applied to his testimony also. [54]

The indictment in this case, returned by a Grand Jury for the Southern District of California, was originally in six counts, five of which now are be-

fore you. Each is brought under the provisions of Title 18, Section 1621, United States Code.

The pertinent provisions of this statute are as follows:

“Whoever, having taken an oath before a competent tribunal, \* \* \* in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, or depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, wilfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury \* \* \*” [55]

The elements of the offense of perjury are:

- (a) Whether the defendant charged did testify as set forth in the particular count of the Indictment;
- (b) Whether the defendant was sworn and under oath at the time of giving his or her testimony;
- (c) Whether or not the defendant charged did wilfully and knowingly give false testimony.

In this case, by stipulation of all parties hereto, it has been agreed that each of the defendants was called as a witness in the case of *United States v. Anthony Frisone*, No. 25580-CD; that each defendant was duly sworn on his or her oath to testify to the truth; and that in said prior proceeding each defendant testified as reported in the transcript of those proceedings, which transcript has been admitted into evidence here.

You are instructed that you must accept the facts

set forth in this stipulation as it was stated and agreed to here in court.

Therefore, there remains of the elements set forth above but one issue: Whether or not the defendant charged wilfully and knowingly gave false testimony in the particular language set forth in each count of the Indictment. [56]

Two primary matters are involved in the determination of the guilt or innocence of the defendants.

First: Is any statement set forth in a particular count of the indictment and attributed to the defendant actually false?

If, after a fair and full consideration of all the evidence in this case, you do not believe beyond a reasonable doubt that any statement attributed to the defendant is false, then, and in that event, you must return a verdict of "Not Guilty." If, however, you are convinced beyond a reasonable doubt that the defendant did give false testimony in the manner alleged in the indictment, then, and in that event, you will have a second issue to determine, namely,

Did the defendant make the false statement wilfully and with the corrupt intent to deceive?

If, after a fair and full consideration of all the evidence in the case, there exists in your minds a reasonable doubt as to whether the false statement was made by the defendant with the wilful and corrupt intent to deceive, then and in that event, it shall be your duty to return a verdict of "Not Guilty."



If, on the other hand, you find that the defendant did make a false statement, as alleged in the indictment, and that the same was made wilfully and with the corrupt intent to deceive, then you shall return a verdict of "Guilty." [57]

You will note from the charge set forth in each count of this Indictment that there are one or more distinct assignments of perjury. The Government need not prove that every one of such statements was perjurious. It is sufficient if it be proved as set forth in these instructions that any one of the statements set forth in a particular count was perjurious, that is, that any one of such statements was knowingly and wilfully, as defined herein, falsely made by the defendant charged while such defendant was testifying under oath. [58]

In a prosecution for perjury it is the duty of the court to first decide whether or not the testimony charged to be false, as set forth in the Indictment, was material to the issues of the case in which said testimony was given.

I have ruled and you are instructed that such testimony was germane and material to the issues of the case in which it was given.

By making this ruling, I am not deciding any issues of fact which are solely within your province to decide in this case. Nor is my ruling that such evidence was material to be construed as an expression of opinion as to the guilt or the innocence of either of these defendants. [59]

In order to sustain a conviction as to any count of the indictment, the burden is upon the prosecu-

tion to prove beyond a reasonable doubt by the testimony of at least two witnesses, or one witness and corroborating circumstances, that the allegedly false statement was, in fact, false, and that the defendant at the time he made said statement did not believe it to be true, and made the statement wilfully and with the intent to deceive. [60]

While the sufficiency of the corroboration is a question for the jury, it is the general rule that to authorize a conviction for perjury the falsity of the statement alleged to have been made by the defendant must be established either by the testimony of two independent witnesses, or by one witness and independent corroborating evidence which is inconsistent with the innocence of the accused. [61]

Or to put it differently, the Government, as to each of the perjury counts in the Indictment, must establish the falsity of the statement alleged to have been made by the defendant, under oath, by the testimony of two independent witnesses or of one witness and corroborating circumstances; corroborating evidence is sufficient only when the evidence, if true, substantiates the testimony of a single witness who has sworn to the falsity of the alleged perjurious statement; you must determine for yourself the credibility and trustworthiness of the corroborative testimony and you must be convinced of its credibility and trustworthiness beyond a reasonable doubt. [62]

To put it negatively:

The uncorroborated testimony of one witness is insufficient to establish the commission of the crime of perjury. [63]

The law does not require any defendant to prove his innocence, which, in many cases, might be impossible, but, on the contrary, the law requires the Government to establish his guilt by legal evidence and beyond a reasonable doubt.

The presumption of innocence with which the defendant is, at all times, clothed is not a mere form to be disregarded by you at pleasure. It is an essential part of the law and is binding on you in this case.

If you can reconcile the evidence before you, upon any reasonable hypothesis consistent with a defendant's innocence, you should do so, and in that case find the particular defendant not guilty. [64]

A reasonable doubt is a doubt based on reason, and which is reasonable in view of all the evidence. And if, after an impartial comparison and consideration of all the evidence, or from a want of sufficient evidence on behalf of the Government to convince you of the truth of the charge, you can candidly say that you are not satisfied of a defendant's guilt, then you have a reasonable doubt. But if, after such impartial comparison and consideration of all the evidence, you can truthfully say that you have an abiding conviction of a defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, you have no reasonable doubt.

Reasonable doubt is not a mere possible doubt; because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case

which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge. [66]

### Intent

In every criminal offense there must be concurrence of act and intent. This is especially true in an offense like the present one which requires that the act shall be done knowingly and wilfully.

This intent is a material element of the offense which, like all others, must be proved beyond a reasonable doubt. In determining the question, you are to consider all the facts and circumstances in the case which touch the conduct of the defendant, as well as the declarations or admissions, if any.

Criminal intent may be implied from the acts, conduct, declarations or admissions of the defendant. Such acts, conduct, declarations and admissions, as shown by the evidence, considered in relation to the charge made, may establish criminal intent beyond a reasonable doubt. [67]

I have already instructed you that in order to support a verdict of "Guilty" as to any one count of the indictment the Government need only prove that the defendant named therein made only one of the statements attributed to him falsely and with the wilful and corrupt intent to deceive.

In regard to this instruction, I now caution you that, as to each of these defendants and as to each count of the indictment, you are not at liberty to

convict them, or either of them, of any of the charges against them, unless there is unanimity of agreement among you as to the particular allegedly false statement and the existence of the requisite intent to deceive as to that statement. [68]

Corroborating evidence, in order to be sufficient, must be substantial but it is not necessary in order to justify a conviction that every detail be re-enumerated by corroborating witnesses. It is sufficient in this regard if two or more witnesses who are believed by you have stated substantially the same events and those events are sufficient, under these instructions as a whole, to make out a case beyond reasonable doubt, or if one such witness has testified to your satisfaction and has been substantially corroborated in each and every material respect by certain, definite and compelling circumstances—satisfactorily established in the whole body of evidence before you. [69]

You will note that the acts charged in the indictment are alleged to have been done “wilfully.”

The word “wilfully” means more than knowingly or voluntarily, and includes having an evil motive or a bad purpose.

The use of the word “wilfully” assures that no one will be convicted because of mistake or inadvertence or other innocent reason. [70]

An unqualified statement of that which one does not know to be true, and of which he knows himself to be ignorant, is equivalent under the law of perjury to a statement of that which one knows to be false. [71]

You are instructed that the alleged falsity of defendants' answers complained of in the several perjury counts of the Indictment must have been known to the defendants at the time they testified and as to this element of the case the government must prove and you must find from the evidence beyond a reasonable doubt that the defendants gave the false answers wilfully, that is purposely and with the knowledge of the falsity at the time they testified. A false answer purposely made cannot be said to have been wilfully made if it was made by or through surprise, mistake or inadvertence or if the false answers were made through forgetfulness or through a poor or mistaken recollection of facts.

A defendant charged with perjury, who during the course of the trial of another cause, affirmed the existence of a fact which he did not know to be true and about which he knew himself to be ignorant, is not guilty of perjury if an analysis of his entire testimony relative to such fact creates a reasonable doubt as to whether he intended to qualify his testimony and convey, to those before whom his testimony was given, a belief that some uncertainty existed in his own mind relative to the truth of the fact affirmed. [73]

A defendant is not required to prove a fact beyond a reasonable doubt nor by a preponderance of the evidence. It is enough if the evidence he produces is sufficient to create in the minds of the jurors a reasonable doubt with respect to any of the facts essential to constitute the offense. [74]

You are instructed that the Indictment sets forth

separate charges of perjury in separate counts and you are to consider each of these counts separately and return a verdict as to each.

You should, of course, consider all the evidence in the case which is relevant and pertinent in arriving at your verdict on each count. [75]

The Government and the defendants are entitled to the individual opinion of each juror on the issues of fact in this case. It is the duty of each of you to consider and weigh all the evidence in the case, and from such evidence to determine, if you can, the question of guilt or innocence of the defendants or any of them. When you have so determined that question, you should not be influenced in giving your verdict by the mere fact that any number or all of your fellow jurors may have reached a different conclusion. If, after careful consideration of all the evidence, your mind is fairly made up, and you are convinced that you are right, it will be your duty to stand by your decision. But each juror should freely and fairly discuss with his fellow jurors the evidence and the deductions to be justly drawn therefrom; this it is his duty to do. If, after such a full and fair discussion, any juror is satisfied that his original decision was wrong, then he should unhesitatingly abandon such decision, and render his verdict according to such final decision. [76]

[Endorsed]: Filed June 4, 1958.

[Title of District Court and Cause.]

REQUESTED AND REFUSED JURY  
INSTRUCTIONS

Refused:

/s/ LEON R. YANKWICH,  
Judge. [77]

[Title of District Court and Cause.]

GOVERNMENT'S REQUESTED JURY  
INSTRUCTIONS

(U.S.C., Title 18, Section 1621-Perjury.)

The Government respectfully requests the Court to include the attached special instructions in its charge to the jury, and requests leave to offer such other and additional instructions as may, during the course of the trial, become appropriate.

Respectfully submitted,

LAUGHLIN E. WATERS,  
United States Attorney,

LLOYD F. DUNN,  
Assistant U. S. Attorney,  
Chief, Criminal Division,

/s/ ROBERT JOHN JENSEN,  
Assistant U. S. Attorney,  
Assistant Chief, Criminal Div.  
Attorneys for Plaintiff,  
United States of America.



## Government's Requested Instruction No. 1.

The Indictment in this case, returned by a Grand Jury for the Southern District of California, is in six counts, each of which is brought under the provisions of Title 18, Section 1621, United States Code.

The pertinent provisions of this statute are as follows:

“Whoever, having taken an oath before a competent tribunal, \* \* \* in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, or depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, wilfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, \* \* \*” [79]

## Government's Requested Instruction No. 2.

In a prosecution for perjury it is the duty of the court to first decide whether or not the testimony charged to be false, as set forth in the Indictment, was material to the issues of the case in which said testimony was given.

I have ruled and you are instructed that such testimony was germane and material to the issues of the case in which it was given.

By making this ruling, I am not deciding any issues of fact which are solely within your province to decide in this case. Nor is my ruling that such evidence was material to be construed as an expression of opinion as to the guilt or the innocence of either of these defendants. [80]

## Government's Requested Instruction No. 3.

The elements of the offense of perjury are:

(a) Whether the defendant charged did testify as set forth in the particular count of the Indictment;

(b) Whether the defendant was sworn and under oath at the time of giving his or her testimony;

(c) Whether or not the defendant charged did wilfully and knowingly give false testimony.

In this case, by stipulation of all parties hereto, it has been agreed that each of the defendants was called as a witness in the case of United States v. Anthony Frisone, No. 25580-CD; that each defendant was duly sworn on his or her oath to testify to the truth; and that in said prior proceeding each defendant testified as reported in the transcript of those proceedings, which transcript has been admitted into evidence here.

You are instructed that you must accept the facts set forth in this stipulation as it was stated and agreed to here in court.

Therefore, there remains of the elements set forth above but one issue: Whether or not the defendant charged wilfully and knowingly gave false testimony in the particular language set forth in each count of the Indictment. [81]

## Government's Requested Instruction No. 4.

"You are instructed that the alleged falsity of defendant's answers complained of in the several perjury counts of the Indictment must have been known to the defendant at the time he testified and as to this element of the case the Government must

prove and you must find from the evidence beyond a reasonable doubt that the defendant gave the false answers wilfully, that is purposely and with the knowledge of the falsity at the time he testified. A false answer purposely made cannot be said to have been wilfully made if it was made by or through surprise, mistake or inadvertence or if the false answers were made through forgetfulness or through a poor or mistaken recollection of facts.”

Taken from the charge to the jury in *United States v. Harold Roland Christoffel*, 171 F. 2d 1004 (1948). The Supreme Court reversed and remanded the case, holding that the Government had failed properly to prove that a quorum of the Committee on Education and Labor of the House of Representatives was present when Christoffel was sworn and testified. The Opinion of the Supreme Court is reported at 330 U.S. 84 (1949). It is clear that the reversal was not upon the ground of error in the instruction but rather upon finding of failure of proof. The instruction given was repeated at the retrial of the case in the District Court for the District of Columbia. [82]

Government's Requested Instruction No. 5

(Statements Made in Absence of Knowledge)

An unqualified statement of that which one does not know to be true, and of which he knows himself to be ignorant, is equivalent under the law of perjury to a statement of that which one knows to be false.

Perjury, Key 37(2); Caljic, Instruction No. 762.

## Government's Requested Instruction No. 6.

## (Perjurer Need Not Know Materiality)

It is not a defense to a prosecution for perjury that the accused did not know the materiality of the false statement, if any, made by him or that it did not in fact affect the proceeding in or for which it was made. If it was in fact material and might have been used to affect such proceedings, the requirement of the law as to materiality is met.

Perjury, Key 37(2); *People v. Darcy* (1943), Calif., 139 Pac. 2d 118 (Perjury); *Wattenmaker v. United States*, 34 F. 2d 741 (3 Cir.) (false swearing before referee); *Travis v. United States*, 123 F. 2d 268 (10 Cir.) (perjury before referee); *Ulmer v. United States*, 219 Fed. 641 (6 Cir.), cert. den. 238 U.S. 638 (perjury before referee). [84]

## Government's Requested Instruction No. 7.

"I further instruct you that as this is a prosecution for perjury, the Government, as to each of the perjury counts in the Indictment, must establish the falsity of the statement alleged to have been made by the defendant, under oath, by the testimony of two independent witnesses or one witness and corroborating circumstances; corroborating evidence is sufficient only when the evidence, if true, substantiates the testimony of a single witness who has sworn to the falsity of the alleged perjurious statement; you must determine for yourself the credibility and trustworthiness of the corroborative testimony and you must be convinced of its credibility and trustworthiness beyond a reasonable doubt.

“Corroborating testimony in that regard must be of a trustworthy character and not merely corroboration of slight particulars \* \* \*”

Taken from the language of *United States v. Harold Roland Christoffel* re-trial in the District of Columbia. Substantially the same instruction was given at the original trial of the case reported first in 171 F. 2d 1004 (1948); reversed upon grounds that it did not attack the instruction, at 330 U.S. 84 (1949). [85]

Government's Requested Instruction No. 8.

Corroborating evidence, in order to be sufficient, must be substantial but it is not necessary in order to justify a conviction that every detail be re-enumerated by corroborating witnesses. It is sufficient in this regard if two or more witnesses who are believed by you have stated substantially the same events and those events are sufficient, under these instructions as a whole, to make out a case beyond reasonable doubt, or if one such witness has testified to your satisfaction and has been substantially corroborated in each and every material respect by certain, definite and compelling circumstances—satisfactorily established in the whole body of evidence before you.

*United States v. Slutzky*, 79 F. 2d 504; *Wiler v. United States*, 323 U. S. 606; *Hart v. United States*, 131 F. 2d 59. [86]

Government's Requested Instruction No. 9.

(Two classes of Evidence—Circumstantial  
and Direct)

(Both on the Same Level)

There are two classes of evidence recognized and admitted in courts of justice, upon either of which juries may lawfully find an accused guilty of crime. One is direct evidence, which is the direct testimony of any eye witness to a transaction. The other is circumstantial evidence, which includes all evidence other than that of an eye witness. Such evidence may consist of any acts, declarations, or circumstances admitted in evidence tending to prove the crime charged or tending to connect a defendant with the commission of the crime charged.

The law makes no distinction between circumstantial evidence and direct evidence in the degree of proof required for conviction. In other words, circumstantial evidence is on no different or lower plane than other forms of evidence. The law only requires that the jury shall be satisfied beyond a reasonable doubt by evidence of either the one character or the other, or both.

If, upon consideration of the whole case, you are satisfied to a moral certainty, and beyond a reasonable doubt, of the guilt of the defendant, you should so find, irrespective of whether such certainty has been produced by direct evidence or by circumstantial evidence.

(See: 1831 & 1832 Calif. Code of Civil Proc. for definition of Direct and Indirect Evidence); Cyc. of Fed. Proc., 2nd Ed., Vol. 9, Sec. 4429 (Circumstantial Evidence); *United States v. Valenti*, 134 F. 2d 362 (5 Cir., 1943) (Income tax matter) (Stat-

ing circumstantial evidence is on no different or lower plane than any other form of evidence);

Also see: [87] *United States v. Becher*, 62 F. 2d 1007, page 1010 (2 Cir.); *United States v. Frankel*, 65 F. 2d 285 (2 Cir.), at pages 288 and 289, cert. den. 290 U.S. 682 (a charge that circumstantial evidence may at times be better than direct evidence held proper); Criminal Law, Key 784 (Circumstantial Evidence, Instructions) *Hickory v. United States*, 151 U.S. 303 (It is not reversible error for the court to say in its charge that persons who assert that it is cruel and criminal to convict upon circumstantial evidence are fools or knaves or sympathetic to criminals.). [88]

Government's Requested Instruction No. 10.

(All Charges of Perjury Need Not Be Proved)

When the Indictment charges in the one count that the defendant made more than one false statement, to support a conviction the proof need show that he made only one of such statements, provided that as to that one statement the proof is adequate under the law and shows that every essential element of the crime of perjury, as I have defined those elements, was present in the making of such statement.

In other words, the prosecution need not prove that all of the alleged testimony was false, but it must prove beyond a reasonable doubt that at least one of such statements was false.

Perjury, Key 37 (3); *Caljic*, Instruction No. 765; *Seymour v. United States*, 77 F. 2d 577 (8

Cir.), at page 581 (Perjury before Senate Investigating Committee); *People v. Pustau*, Calif. 39 Cal. App. 2d 407, 103 Pac. 2d 224 (Perjury); *People v. Mizer*, 37 Cal. App. 2d 148, 99 Pac. 2d 333 (Perjury); *Warszower v. United States*, 312 U.S. 342 (Prosecution of false statements in obtaining passport). [89]

Government's Requested Instruction No. 11.  
(Criminal Intent)

In every crime or public offense there must exist a union or joint operation of act and intent. To constitute a criminal intent, it is merely necessary that a person intended to do an act which, if committed, will constitute a crime. This does not mean that one must intend all the consequences of his conduct or that he must know that such conduct is unlawful to be guilty of a public offense such as is charged in this case.

When a person intentionally does that which the law declares to be a crime, such person is acting with criminal intent even though he may not know that such act is unlawful and even though there be no bad motive on his part.

(Criminal Law, Key 772 (5), Intent, etc.)

You are instructed that criminal intent must be proved beyond a reasonable doubt, but since it is impossible to enter the mind of the accused to find the intent at the date of the alleged offense, it may be established by circumstances, conduct both before, at, and subsequent to the acts charged.

The defendant's act and conduct considered in



their relation to the charge made, may establish satisfactorily a criminal intent notwithstanding the declaration of the defendant that no such intent was present in his mind. The law presumes that every man intends the natural and ordinary consequences of his acts.

(Criminal Law, Key 312 (Intent))

Wrongful acts, knowingly, wilfully and deliberately committed, cannot be justified on the ground of innocent intent. The color of the act, done with the knowledge of its natural or necessary results, determines the complexion of the intent.

Intention, as I have advised, may be proved by circumstantial evidence. Indeed, it rarely can be proved by any other means; it is something that no man can determine by looking into the mind of another.

You should examine all of the evidence, all the facts and circumstances which tend to shed light on what the intent may or may not have been as of the time charged in the Indictment.

Cyc. of Fed. Proc., 2nd Ed., Vol. 9, Sec. 4310; Criminal Law, Key 772 and 772 (5) (Elements of Offense and (5) Intent, etc.); *United States v. Fore*, 38 F. Supp. 140 D.C. Calif. (1941) (Homicide—insanity) (Intent may be shown by circumstances, conduct, etc.); *Eastman v. United States*, 153 Fed. 2d 80, page 83; Criminal Law, Key 568 (also see Pocket Part) (Elements of offenses in general) (Intent may be shown by inference and circumstantial evidence); *Johnson v. United States*, 260

Fed. 783 (9 Cir.), page 785; *Aiken v. United States*, 108 F. 2d 182 (4 Cir.) (Fraudulent intent a mental element often not provable from direct evidence); *Nassan v. United States*, 126 F. 2d 613 (4 Cir.) (Intent proved from all circumstances); *Stunz v. United States*, 27 F. 2d 575 (8 Cir.); *Caljic*, Instruction No. 71. [90]

[Title of District Court and Cause.]

GOVERNMENT'S REQUESTED ADDITIONAL  
JURY INSTRUCTIONS

(U.S.C., Title 18, § 1621—Perjury)

The Government respectfully requests the Court to include the additional attached special instructions in its charge to the jury, and requests leave to offer such other and additional instructions as may, during the course of the trial, become appropriate.

Respectfully submitted,

LAUGHLIN E. WATERS,

United States Attorney,

LLOYD F. DUNN,

Assistant U. S. Attorney, Chief,

Criminal Division,

/s/ ROBERT JOHN JENSEN,

Assistant U.S. Attorney, Assist-

ant Chief, Criminal Division,

Attorneys for Plaintiff,

United States of America.

## Government's Requested Instruction No. 12

You are instructed that the Indictment sets forth separate charges of perjury in separate counts and you are to consider each of these counts separately and return a verdict as to each.

You should, of course, consider all the evidence in the case which is relevant and pertinent in arriving at your verdict on each count. [92]

## Government Requested Instruction No. 13

You will note from the charge set forth in each count of this Indictment that there are one or more distinct assignments of perjury. The Government need not prove that every one of such statements was perjurious. It is sufficient if it be proved as set forth in these instructions that any one of the statements set forth in a particular count was perjurious, that is, that any one of such statements was knowingly and wilfully, as defined herein, falsely made by the defendant charged while such defendant was testifying under oath. [93]

## Government's Requested Instruction No. 14

(Province of the Jury)

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the Indictment and the denial made by the "Not-Guilty" plea of the accused. You are to perform this duty without bias or prejudice as to any party. The law does not permit jurors to be governed by sympathy, prejudice, or public opinion. The accused and the public expect that you will carefully and impartially consider all the evi-

dence, follow the law as stated by the Court, and reach a just verdict, regardless of the consequences.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed May 27, 1958.

[Title of District Court and Cause.]

## DEFENDANTS' REQUESTED INSTRUCTIONS

### Request for Instructions

Come now the defendants, Anthony Frisone and Nora Mathis Frisone, and respectfully request the Court in its charge to the jury to include the following instructions; and leave is requested to offer such additional instructions as may, during the course of the trial, become appropriate.

CANTILLON & CANTILLON,  
JAMES P. CANTILLON,

/s/ By R. MICHAEL CANTILLON,

Attorneys for Defendants. [96]

#### Defendants' Requested Instruction No. 1

It is the function of you, the jury, to try the issues of fact that are presented by the allegations in the indictment filed in this Court and the defendants' pleas of "Not Guilty".

You must not suffer yourselves to be biased against the defendants because of the fact that they have been arrested for the offense here charged or because an indictment has been returned against them, or because they have been brought before the Court to stand trial. None of these facts is evi-

dence of their guilt, and you are not permitted to infer or to speculate from any or all of them that they are more likely to be guilty than innocent. On the other hand, the defendants' pleas of "Not Guilty" are facts which raise the presumption of innocence. [97]

### Defendants' Requested Instruction No. 2

The Court instructs the Jury:

A presumption of innocence surrounds a defendant in a criminal prosecution such as this one and continues to operate until it is overcome by proof of guilt beyond a reasonable doubt.

The theory of the doctrine of the presumption of innocence lies not in a design to protect the guilty, but in a zeal to prevent the conviction of the innocent.

All of the evidence in a criminal case, whether introduced by the prosecution or by the defendant, should be examined by you, the jury, in the light of the presumption of innocence, and whenever it is reasonable to do so, it is your duty as trial jurors to place an innocent interpretation upon the acts and conduct of the accused.

U. S. v. Fleishman, 339 U. S. 349. [98]

### Defendants' Requested Instruction No. 3

A "reasonable doubt" exists when, after the entire comparison and consideration of all the evidence, the minds of the jurors are in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. [99]

## Defendants' Requested Instruction No. 3A

If the evidence in this case is susceptible of two constructions or interpretations each of which appears to you to be reasonable, and one of which points to the guilt of the defendant and the other to his innocence, it is your duty, under the law, to adopt that interpretation which will admit of the defendants' innocence and reject that which points to his guilt. [100]

## Defendants' Requested Instruction No. 4

From the beginning of the trial until the end, the Government has the burden of establishing beyond a reasonable doubt every fact essential to the conviction of the defendants; the defendants have no burden to sustain; it's enough that their evidence, taken with the Government's, raises a reasonable doubt as to their guilt, in which case they must be acquitted.

*Agnew v. United States*, 165 U. S. 36, 17 S. Ct. 235, 41 L. Ed. 624;

*United States vs. Fleishman*, 339 U. S. 349. [101]

## Defendants' Requested Instruction No. 5

Any verdict that you shall return must reflect the individual opinion of each juror. The defendants are entitled to the individual opinion of each and every member of the jury on the proposition of their guilt or innocence, and therefore, the verdict that you return must reflect the individual and conscientious opinion of each of you.

Although it is in the interests of both the defendants and the government that a verdict be returned,

I caution you that it would be a violation of your oath as jurors to change any conscientious opinion of your own on the subject of the guilt or innocence of these defendants solely for the purpose of returning a verdict, or for the reason that a majority of your fellow jurors may hold a contrary opinion. It would also be a violation of your oath to compromise any conscientious determination you have reached solely because of the number of counts in the indictment. [102]

Defendants' Requested Instruction No. 6

Whenever during the course of my instructions to you I use the masculine singular, I do so for convenience only, and you, the jury, must apply these instructions to the female defendant and witnesses as well, unless, of course, the instruction in which I use the masculine singular has application only to a particular count of the indictment by which Anthony Frisone is charged, or singles out a particular male witness. [103]

Defendants' Requested Instruction No. 7

You are the exclusive judges of the credibility of the witnesses. A witness is presumed to speak the truth. This presumption, however, may be overcome by contradictory evidence; by the manner of the witness on the stand, the degree of intelligence exhibited by him, and the manner in which he testifies; by the character of his testimony; by evidence showing his motives, or bias, or prejudice, against one of the parties; by evidence that on some former occasion he made a statement or statements incon-

sistent with his present testimony, or by evidence adversely affecting the character of the witness for truth, honesty, or integrity. [104]

Defendants' Requested Instruction No. 8

In weighing the credibility of the witnesses who have testified during the course of this trial, you may consider whether any of the witnesses have suffered a prior conviction of a felony involving moral turpitude.

The witness, Norma Jean Scholes, admitted from the witness stand that she had, before the commencement of this trial, been convicted of a violation of the Mann Act. I now charge you that a violation of the Mann Act involves moral turpitude. [105]

Defendants' Requested Instruction No. 9

In this case, you must decide separately the question of the innocence or guilt of each of the two defendants.

Nora Mathis Frisone is entitled that you give individual consideration to her case without regard to the charges against her husband and co-defendant, Anthony Frisone. She is also entitled that you, the jury, consider separately each of the counts of the indictment which constitute a charge against her.

Of course, the same holds true for the defendant Anthony Frisone, and he likewise is entitled that you consider the charges against him separately and without regard to the charges against his wife and co-defendant, Nora Mathis Frisone. [106]



## Defendants' Requested Instruction No. 10

By virtue of the stipulation entered into between the Government and the defendants at the commencement of this trial, there remain only two primary issues to be resolved by you in determining the guilt or innocence of these defendants. These questions to be resolved by you must be applied to each count of the indictment separately.

First: Is any statement set forth in the indictment and attributed to the defendant actually false?

If, after a fair and full consideration of all the evidence in this case, you do not believe beyond a reasonable doubt that any statement attributed to the defendant is false, then, and in that event, you must return a verdict of "Not Guilty". If, however, you are convinced beyond a reasonable doubt that the defendant did give false testimony in the manner alleged in the indictment, then, and in that event, you will have a second issue to determine, namely:

Did the defendant make the false statement wilfully and with the corrupt intent to deceive?

If, after a fair and full consideration of all the evidence in the case, there exists in your minds a reasonable doubt as to whether the false statement was made by the defendant with the wilful and corrupt intent to deceive, then, and in that event, it shall be your duty to return a verdict of "Not Guilty".

If, on the other hand, you find that the defendant did make a false statement, as alleged in the

indictment, and that the same was made wilfully and with the corrupt intent to deceive, then you shall return a verdict of "Guilty", provided, however, that each of you must keep in mind throughout your [107] deliberations that the entire proof must carry the convincing force required by law to support a verdict of guilt before such a verdict may be returned. [108]

Defendants' Requested Instruction No. 11

In order to sustain a conviction as to any count of the indictment, the burden is upon the prosecution to prove beyond a reasonable doubt by the testimony of at least two witnesses, or one witness and corroborating circumstances, that the allegedly false statement was, in fact, false, and that the defendant at the time he made said statement did not believe it to be true, and made the statement wilfully and with the intent to deceive.

United States vs. Hall, 44 Fed. 864;

Bohen vs. United States, 123 Fed. (2d) 791. [109]

Defendants' Requested Instruction No. 12

The uncorroborated testimony of one witness is insufficient to establish the commission of the crime of perjury. [110]

Defendants' Requested Instruction No. 13

Proof by the prosecution that a defendant charged with perjury gave false testimony while under oath does not raise a presumption or inference of guilt nor does such evidence alone rebut the presumption of innocence.

The giving of false testimony is only one element of the crime of perjury, and a defendant so charged is entitled to a verdict of "Not Guilty" unless the presumption that such false testimony was given innocently is rebutted by evidence that establishes beyond a reasonable doubt that such testimony was given wilfully and with the corrupt intent to deceive. [111]

Defendants' Requested Instruction No. 14

A defendant charged with perjury, who during the course of the trial of another cause affirmed the existence of a fact which he did not know to be true and about which he knew himself to be ignorant, is not guilty of perjury if an analysis of his entire testimony relative to such fact creates a reasonable doubt as to whether he intended to qualify his testimony and convey, to those before whom his testimony was given, a belief that some uncertainty existed in his own mind relative to the truth of the fact affirmed.

(To be given if Government's Requested instruction No. 5 is given.) [112]

Defendants' Requested Instruction No. 15

I have already instructed you that in order to support a verdict of "Guilty" as to any one count of the indictment, the Government need only prove that the defendant named therein made only one of the statements attributed to him falsely and with the wilful and corrupt intent to deceive.

In regard to this instruction, I now caution you that, as to each of these defendants and as to each

count of the indictment, you are not at liberty to convict them, or either of them, of any of the charges against them, unless there is unanimity of agreement among you as to the particular allegedly false statement and the existence of the requisite intent to deceive as to that statement.

To put the matter another way, let me say this—and bear in mind that it has application to each defendant and to each count of the indictment:

Before you may find either of these defendants guilty as charged in any count of the indictment, all of you must be convinced, and beyond a reasonable doubt, that at least one particular statement in the count under consideration is false and that the false statement was made wilfully and with the intent to deceive. [113]

#### Defendants' Requested Instruction No. 16

The law recognizes that failure of recollection is a common experience and innocent misrecollection is not uncommon. It is also a fact that two persons witnessing an event often will see or hear it differently and thus recall it, in many of its details, at variance with one another. Therefore, if you find that either of the defendants here on trial gave false testimony as alleged in the indictment, you should weigh and consider all of the evidence introduced during the trial touching upon the subject of such testimony, in an effort to determine whether the falsehood was wilfully made and with the intent to deceive, or whether it was made through an honest mistake in its belief, or as a result of inno-

cent misrecollection, and if, after such consideration, there exists in your mind a reasonable doubt as to whether the defendants, or either of them, wilfully and corruptly intended to deceive at the time such testimony was given, then it is your duty to resolve that doubt in favor of the defendants, or defendant as the case may be, and return a verdict of "Not Guilty". [114]

#### Defendants' Requested Instruction No. 17

Upon the trial of a person charged with the commission of perjury who, it is alleged, testified falsely during the course of another trial, you, the jury, should weigh and consider the probability, or lack of probability, that the allegedly false testimony would have influenced the tribunal before which it was given.

That is to say, that although I have found, as a matter of law, that the testimony set forth in the indictment was material to the proceedings in which it was given, nevertheless, and because there are varying degrees of materiality and relevancy, you, the jury, should consider the extent of the likelihood that the false testimony would have influenced the tribunal before which it was given as bearing upon the existence or non-existence of a motive to testify falsely. [115]

#### Defendants' Requested Instruction No. 18

A defendant in a criminal prosecution is a competent witness to testify in his own behalf. A defendant's testimony is to be weighed and considered by the same standard that you use to weigh

and consider the testimony of any other witness. You should not disregard a defendant's testimony solely because he is a defendant. A defendant is presumed to speak the truth, and the testimony of the defendant is sufficient alone to establish any fact to which you believe he truthfully testified.

[Endorsed]: Defendants' Requested Instructions Filed June 2, 1958.

[Endorsed]: Filed June 4, 1958.

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[Title of District Court and Cause.]

MOTION FOR NEW TRIAL OF DEFENDANT  
ANTHONY FRISONE

Comes now the defendant Anthony Frisone, having heretofore been convicted of the crime of perjury as alleged in count five of the indictment herein, and moves the Court for a new trial in accordance with the provisions of Rule 33 of the Federal Rules of Criminal Procedure.

The motion of defendant is based upon the following grounds:

1. That the trial court committed substantial, prejudicial error when it failed to admit relevant and pertinent evidence offered by the defendant Anthony Frisone of his medical history concerning mental illness. That such evidence was germane to a determination of the existence or nonexistence of a wilful and corrupt specific intent to falsify on the occasion when an admittedly false statement was made by the defendant.

2. That the trial court committed substantial and [117] prejudicial error when it misdirected the jury and instructed them that they could convict this defendant upon the finding that any one of the statements attributed to the defendant by count five of the indictment was perjurally made.

Dated: June 11, 1958.

CANTILLON & CANTILLON,  
/s/ By R. MICHAEL CANTILLON,  
Attorneys for Defendant.

Proof of Service by Mail Attached.

[Endorsed]: Filed June 11, 1958.

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[Title of District Court and Cause.]

### MINUTES OF THE COURT

Date: June 30, 1958. At: Los Angeles, Calif.

Present: Hon. Leon R. Yankwich, District Judge;  
Deputy Clerk: L. Cunliffe; Reporter: Marie Zellner; U. S. Attorney, by Assistant U. S. Attorney: Robert J. Jensen, Esq.; Counsel for Defendant: James P. Cantillon, Esq. Defendants both present (on bond).

Proceedings:

1. For hearing on motion of Defendant Anthony Frisone for new trial: Both sides argue.

It Is Ordered that said motion be denied.

2. For hearing on report of Probation Officer as to defendant Anthony Frisone and for sentence

upon a verdict of guilty as to Count 5 and for disposition of Counts 3 & 4:

It Is Ordered that the defendant Anthony Frisone be committed to the custody of the Attorney General for imprisonment for a period of eighteen (18) months as to Count 5, and upon the motion of the U. S. Attorney, it is further ordered that Counts 3 & 4 hereby and are dismissed.

It Is Further Ordered that execution of sentence on Count 5 be suspended until 5 p.m., July 2, 1958, at which time defendant Anthony Frisone is to surrender to the U. S. Marshal, and until that time, he is allowed to remain on present bail.

It Is Further Ordered that Count 1 as to the defendant Nora Mathis Frisone hereby and is dismissed.

JOHN A. CHILDRESS,  
Clerk,

/s/ By L. CUNLIFFE,  
Deputy Clerk. [120]

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[Title of District Court and Cause.]

MEMORANDUM AND POINTS AND AU-  
THORITIES IN SUPPORT OF MOTION  
FOR NEW TRIAL

Defendant Anthony Frisone herewith presents his Memorandum and Points and Authorities in support of his motion for a new trial.

Statement of Facts

An indictment was returned herein charging de-



defendant with the commission of perjury in four counts (see Counts 2-6 of Indictment). Defendant was acquitted of the charges contained in Count 6, and a mistrial was declared as a result of the inability of the jury to reach a verdict as to Counts 3 and 4. Defendant was convicted of the charges contained in Count 5.

Count 5 in substance charges that defendant testified that he knew Nora Mathis Frisone, the co-defendant, only casually in the month of December, 1954, when in fact he had been living with her as man and wife since September, 1954. [121]

The defendant admitted making the false statement attributed to him by the allegations of the indictment, but stated that at the time he made the false statement, he did so in good faith with the honest belief that he was telling the truth.

To support his contention that the admitted falsehood was the result of an honestly mistaken belief in its truth, defendant related how, prior to the giving of such testimony, he talked with several persons in an effort to determine exactly the date of his first intimate association with the co-defendant, and how he attempted to reconstruct the years 1954 and 1955 in his own mind.

The defendant further attempted to prove that in the past he had suffered from a mental illness which affected his memory and ability of recollection. The Court rejected this offered testimony during the course of the following proceedings:

“Cantillon: Now, Mr. Frisone, I am going to

ask you if you have ever suffered any mental illness in the past.

U. S. Atty.: I will object to that as being improper and ask him to lay more foundation.

Court: I cannot see any bearing on the issue here.

Cantillon: Well, I am going to offer to prove, your Honor, that Mr. Frisone was treated by the Marine Corps.

Court: No, we don't want any offer of proof—there is no plea of insanity here.

Cantillon: It is not based upon that. It is based upon the defendant's honest belief and recollection or failure of recollection.

Court: Well, I don't think failure of recollection is a defense on a plea of not guilty in the Federal Court. [122]

Cantillon: Well, I think I have stated my point.

The Court: All right.

Cantillon: Nothing further.

Court: Ladies and gentlemen, you are not to assume from the conversation that we had that any such condition exists. I did not know what counsel was offering, and it was merely offered to prove certain things which have no bearing upon the issues in this case."

Note: The foregoing recitation of the record of the within proceedings is based upon an oral transcription of the trial court reporter's notes by another reporter whose statements were taken down in shorthand over the telephone by defense counsel's secretary.

### Argument and Points and Authorities

The United States Attorney in his Memorandum in Opposition to Defendant's Motion for a New Trial inaccurately states that the foregoing proceedings and the rejection of the aforesaid evidence occurred during "sur-rebuttal". In fact, the foregoing proceedings occurred during the defense. The defense offered no sur-rebuttal evidence.

The materiality of the foregoing offered evidence is patent, and its significance to the count upon which the defendant was convicted is pointed up by the fact that as to all of the other charges against him, the defendant testified he had spoken the truth.

The verdict of the jury and their statement that they were unable to agree and request for further instructions indicate a substantial conflict in the evidence and its interpretation.

The mental state of a defendant charged with the commission of perjury is always relevant. An essential element [123] of the crime of perjury is the giving of false testimony by a defendant:

"\* \* \* which he does not believe to be true \* \* \*"

18 U.S.C.A. 1621; U.S. vs. Rose, (CA 3 D) 215 Fed. 2nd 617; Wharton's Criminal Law & Procedure, Vol. 3 P. 650.

Offers of proof have long been recognized in the Federal Courts as both appropriate and a proper method of establishing the admissibility of evidence. (23 C.J.S., Criminal Law, Section 1029 and cases cited therein.)

A court is never justified in refusing a defendant

the opportunity to make an offer of proof except where every conceivable answer to the question would be inadmissible.

D- Aquino vs. U.S., (C.A. 9th) 192 Fed. 2d 338.

Where the trial judge refuses the defendant an opportunity to establish the admissibility of evidence by an offer of proof, it is reversible error if any conceivable answer would have been relevant to the facts in issue.

Heimann vs. City of L.A., 30 Cal. 2d 746; People vs. McGee, 31 Cal. 2d 229.

Respectfully submitted,

CANTILLON & CANTILLON,  
/s/ By JAMES P. CANTILLON,  
Attorneys for Defendants. [124]

[Endorsed]: Filed June 30, 1958.

[Title of District Court and Cause.]

## OPPOSITION TO MOTION FOR NEW TRIAL

Plaintiff opposes the Motion for New Trial of the defendant Anthony Frisone upon the following grounds:

1. The trial court did not commit error in its rulings on evidence and in the Instructions given.
2. No prejudice to said defendant resulted from the court's rulings on evidence or its Instructions.
3. No proper exception was taken of the Instruction now asserted as error.

These grounds are supported by the record in this case and the attached Points and Authorities.

### Points and Authorities

The proposed testimony on mental illness was offered in sub-rebuttal where the evidence in rebuttal had not gone to any such issue or any related issue and defendant did not offer nor ask to re-open his defense in chief. Furthermore, the defendant had twice before been on the stand without broaching such subject. Under these circumstances it is not an abuse of discretion for the trial court to refuse to admit such evidence.

Wigmore on Evidence, § 1874 of Vol. VI, Third Edition; Corpus Juris Secundum, Vol. 88, § 103 of Trials, p. 217; Chateaugay Ore & Iron Co. v. Blake (Sup. Ct. 1892), 144 U.S. 476, at 484-485; O. W. Kerr Co. v. Corry (7 Cir. 1914), 211 Fed. 647.

As to the proffered testimony, there was no foundation as to time or place in relation to the issues of this case. Such evidence had therefore no probative value.

The defendant failed to except with particularity or at all to the Instructions now complained of, and such Instruction, as given, was a proper statement of the law.

Rule 30, F.R.C.P., U.S.C.; Benatur v. United States (9 Cir. 1954), 209 F.2d 734, at 744; cert. den. 347 U.S. 974; Las Vegas Merchant Plumbers v. United States (9 Cir. 1954), 210 F.2d 732, at 744, 745.

Seymour v. United States (8 Cir.), 77 F.2d 577,

at 581; *People v. Pustau* (Calif.), 103 Pac. 2d 224, at 228. [126]

Respectfully submitted,

LAUGHLIN E. WATERS,

United States Attorney,

LLOYD F. DUNN,

Assistant U. S. Attorney, Chief,

Criminal Division,

/s/ ROBERT JOHN JENSEN,

Assistant U.S. Attorney, Assist-

ant Chief, Criminal Division,

Attorneys for Plaintiff. [127]

Affidavit of Service by Mail Attached. [128]

[Endorsed]: Filed June 26, 1958.

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United States District Court for the Southern  
District of California, Central Division

No. 26307-Criminal Central

UNITED STATES OF AMERICA

vs.

ANTHONY FRISONE

JUDGMENT AND COMMITMENT

On this 30th day of June, 1958 came the attorney for the government and the defendant appeared in person and by his counsel, James P. Cantillon, Esq.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and upon a jury

verdict of Guilty as to Count 5 of the Indictment of the offense of on or about March 26, 1957, during the course of trial in Criminal Case No. 25580-CD, defendant did knowingly, wilfully and contrary to oath taken as witness in said trial, testify falsely in respect to material matters of said case in that he testified as to his knowing his wife Nora Mathis Frisone in December of 1954 only casually whereas in truth and in fact said defendant was living with said Nora Mathis Frisone from September 17, 1954 to the end of that year as charged in Count 5 of the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of eighteen (18) months, and it is Further Ordered that execution of said sentence be suspended to 5 p.m., July 2, 1958, at which time defendant is to surrender to the custody of the U. S. Marshal, and he is allowed to remain on present bond until that time, and

It Is Adjudged that, upon motion of the U. S. Attorney, Counts 3 & 4 of the Indictment as to defendant Anthony Frisone, hereby and are dismissed.

It Is Ordered that the Clerk deliver a certified





[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled matter:

A. The foregoing pages numbered 1 to 141, inclusive, containing the original:

Indictment.

Minute Order 12/2/57.

Minute Order 12/2/57.

Minute Order 12/17/57.

Notice of Motion and Motion for Trial Setting.

Minute Order 2/7/58.

Trial Memorandum.

Minute Order 5/27/58.

Minute Order 5/28/58.

Minute Order 5/29/58.

Minute Order 6/3/58.

Minute Order 6/4/58.

Answer to Question of the Jury.

Jury Verdict.

Court's Instructions to the Jury.

Requested and Refused Jury Instructions.

Motion for New Trial.

Minute Order 6/30/58.

Memorandum of Points and Authorities in support of Motion for New Trial.

Opposition to Motion for New Trial.

Judgment.

Minute Order 7/2/58.

Notice of Appeal.

Notice of Designation of Clerk's and Reporter's Records on Appeal.

Application to extend time for filing of record and docketing appeal.

Order extending time to file and docket record on appeal.

Notice of Designation of further record on appeal.

Second Notice of Designation of further record on appeal.

B. Government's Exhibits 1 to 9-A, inclusive.

Defendant's Exhibits A to H, inclusive.

Court's Exhibit No. 1.

C. Three volumes of Reporter's Official Transcript of Proceedings had on: May 27 and 28, 1958; May 29, 1958, June 3, 1958, June 4, 1958 and June 20, 1958.

I further certify that my fee for preparing the foregoing record, amounting to \$1.60, has been paid by appellant.

Dated: October 31, 1958.

[Seal]

JOHN A. CHILDRESS,  
Clerk,

/s/ By WM. A. WHITE,  
Deputy Clerk.

In the United States District Court, Southern  
District of California, Central Division

No. 26307-Criminal

UNITED STATES OF AMERICA, Plaintiff,

vs.

ANTHONY FRISONE and NORA MATHIS  
FRISONE, Defendants.

REPORTER'S TRANSCRIPT OF  
PROCEEDINGS

Los Angeles, California

Tuesday, May 27, 1958

Honorable Leon R. Yankwich, Judge Presiding,  
and a Jury. [14]

\* \* \* \* \*

INGA CONSTANCE SMITH

called as a witness by and on behalf of the Govern-  
ment, having been first duly sworn, testified as fol-  
lows:

The Clerk: Your name, please?

The Witness: Mrs. Ben Smith.

The Clerk: Your given name.

The Witness: Inga Constance Smith. [151]

Direct Examination

Q. (By Mr. Jensen): Mrs. Smith, we have a  
large room here, and you have somewhat of a soft  
voice. Would you keep it up, so that we can all  
hear you? A. I will. I'll try.

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\* Page numbers appearing at top of page of Reporter's Tran-  
script of Record.

(Testimony of Inga Constance Smith.)

Q. Thank you. That is fine. Mrs. Smith, where do you reside?

A. At 7538 Lexington Avenue in Hollywood.

Q. Are you married?           A. Yes.

Q. And does your husband reside with you?

A. Yes.

Q. How long have you resided there?

A. Well, to the best of my knowledge, I would say about seven or eight years, where we live right now.

Q. Do you have some rental property at that location, or approximately at that location?

A. Yes, we do.

Q. How many units do you have?

A. We have three.

Q. And would you tell us, briefly, what the nature of the units are?

A. Well, we have an adjoining apartment to ours, furnished adjoining apartment. [152]

Q. To what place?

A. To ours, to where we are living now.

Q. Fine. And the other two units?

A. Are a little cottage in the rear, and a garage apartment in the rear.

Q. And the adjoining apartment to yours, does it have a separate address?           A. Yes.

Q. Would you give us the number of that, please?           A. 7540 Lexington.

Q. That is 7540 Lexington?

A. That's right.

Q. In Hollywood?           A. Yes.

(Testimony of Inga Constance Smith.)

Q. I direct your attention to the defendants, Mr. and Mrs. Frisone, who are at counsel table to my left. Would you tell us, Mrs. Smith, whether they were at any time tenants of yours?      A. Yes.

Q. Were they tenants together? I mean by that, did they occupy the same premises?      A. Yes.

Q. And which premises did they occupy?

A. 7540.

Q. The adjoining apartment? [153]

A. The adjoining apartment to ours.

Q. And when did they occupy those premises?

A. From the fall of 1954 to 1955.

The Court: Can you be more specific on what you mean by the fall?

The Witness: Well, to the best of my knowledge, I believe they rented that apartment in September, and that I believe it was in January when they gave us our notice—their notice.

Q. (By Mr. Jensen): Did you know them as man and wife?      A. Yes.

Q. By what given name did you know Mrs. Frisone?      A. Nora.

Q. And by what name, what given name did you know Mr. Frisone?      A. Tony.

Q. Mrs. Smith, did they own, or did they have with them a vehicle,—an automobile?      A. Yes.

Q. What kind of an automobile was it?

A. It was a Plymouth.

Q. And the body style?

A. A station wagon.

Q. And its color?      A. Blue.

(Testimony of Inga Constance Smith.)

Q. Do you recall the year? [154]

A. No, I wouldn't exactly.

Q. Mrs. Smith, the tenants in the adjoining property at 7540 Lexington, is their light and gas metered separately from the other units of your rental property? A. Yes.

Q. Is it your custom and practice, if you have a custom and practice, for the tenants to secure the gas and light in their own name? A. Yes.

Q. Was this done in respect to the Frisones?

A. Yes.

Mr. Jensen: You may have the witness. Oh, one further question.

Q. Mrs. Smith, you had occasion today, while you were here in court, to speak to both of the defendants, did you not? A. Yes.

Q. And you have talked to each of them?

A. Yes.

Q. You are satisfied that they are the same people as your tenants, are you not? A. Yes.

Mr. Jensen: You may have the witness. [155]

#### Cross Examination

Q. (By Mr. Cantillon): Mrs. Smith, when is the first time that anyone inquired of you relative to the tenancy of the defendants here at 7540 Lexington Avenue? A. The first time?

Q. That an inquiry was made of you relative to that tenancy.

A. Well, I guess, to the best of my memory, I believe it was about six months ago, five or six

(Testimony of Inga Constance Smith.)

months ago. A man came to my house and inquired about them, one of the FBI agents.

Q. He identified himself, did he?

A. Yes, he did.

Q. And do you have any records of this tenancy?           A. No.

Q. Any rental receipts at all?           A. No.

Q. Let me ask you this: Do you remember a woman coming to talk to you in the early part of March of 1957, a blond woman, relative to the tenancy of the Frisones at 7540 Lexington Avenue?

A. A blond woman? Not that I recall.

Q. Well, did a woman come and identify herself as Marcelle Edwards, Mrs. Edwards? [156]

A. I don't recall it.

Q. Let me ask you this, to see if this refreshes your recollection: Did a woman come to you some time in March, 1957,—

Mr. Jensen: Your Honor please, I will object.

The Court: Just a minute.

Mr. Jensen: I will object to this as being immaterial and irrelevant.

The Court: Oh, no. I will instruct the jury, however, that if she admits it, it is all right. If she denies it, then they are not to imply anything from the question, just as I did before.

Mr. Jensen: Very well, your Honor.

The Court: The witness having testified they occupied the premises, he may attempt to show that she made a statement contradictory of that to somebody. That is permissible.

(Testimony of Inga Constance Smith.)

Mr. Jensen: Very well.

The Court: And that is the purpose. But I will tell the jury that if she denies it, they are not to imply, unless the person who claims to have had the conversation comes on the stand, is sworn, and says that such a statement was made. In the course of the instructions I will tell you how testimony of a witness is impeached. That is permissible.

Go ahead. Read the question, please. [157]

Mr. Cantillon: I believe I just got started, your Honor. I will withdraw it, if that is agreeable.

The Court: No, I don't want you to. Then the objection will not stand, and what I have said will not stand, and I will have to repeat.

Let's start in and see if she can answer. Maybe she will answer so far as you have gone, and then you can ask another question.

Read the question, please. I thought the question was completed.

(The question was read.)

The Court: The prior question was more complete. Go ahead and complete the question, with the understanding that the objection is made, and I will overrule it, and the observations I have made apply to the completed question. Go ahead.

Q. (By Mr. Cantillon): Did a woman come to you, physically described as I have heretofore stated, and state to you that she was interested in ascertaining the dates that the Frisones stayed as tenants at your apartment, and you stated to the woman, in effect, that you had no recollection as



(Testimony of Inga Constance Smith.)

to the specific time, or even generally as to the year, that you had no records. The woman then asked you if you couldn't look and see if you had some rent receipts, fixing the approximate time, and you stated no, [158] that you remembered them quite well, that they were respectable tenants, and apparently that you had no problems with them, but that you couldn't—you were unable to tell her when they were tenants at 7540 Lexington Avenue. Now, does that refresh your recollection?

A. No, it doesn't, but, however, having had tenants who move in and move out, I have had several occasions where people have come and inquired about them, and if I have been able to help them, or give them any information, I would. Otherwise, of course, I couldn't.

So there have been occasions when I have talked with people, and I just wouldn't recall that that was something pertaining to the Frisones, or someone else at the time. But this just doesn't ring a bell with me.

Q. Let me see if this will help you ring a bell. She asked you concerning three years, 1953, 1954, and 1955, and asked if you were able to fix the tenancy in any one of those three years, as either commencing or terminating in any of those three years, and if you didn't state to her that you were unable to do it?

A. That I could fix their what?

Q. Fix their tenancy as either beginning or ending in 1953, 1954 or 1955?

A. No.

(Testimony of Inga Constance Smith.)

Q. And if you didn't tell her that you didn't know, and [159] I believe your husband was present at the time, and if you both didn't state that you didn't know, and that you had no records from which you would be able to refresh your memory.

A. Well, I am sorry, I can't. I just don't recall the incident.

Mr. Cantillon: I have nothing further.

The Court: All right. Anything further?

Mr. Jensen: No, your Honor.

The Court: All right. Mrs. Smith, step down. You may be excused.

The Witness: Thank you.

(Witness excused.) [160]

\* \* \* \* \*

### BENJAMIN SMITH

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name, sir?

The Witness: Ben Smith.

### Direct Examination

Q. (By Mr. Jensen): Mr. Smith, would you state your full name to us, so that we can all hear it?

A. I beg your pardon?

Q. Would you state your name to us, please?

A. Do you want the full name?

Q. Yes, please.

A. Benjamin Joseph Aloisius St. Patrick Smith.

Q. Thank you. Mr. Smith, where do you reside?

(Testimony of Benjamin Smith.)

A. At 7538 Lexington Avenue.

Q. And was the woman who just left the stand your wife?      A. Yes, sir.

Q. Do you have some rental property adjoining your apartment at an address of 7540 Lexington Drive, Hollywood, California?

A. Yes. Lexington Avenue, California.

Q. I am sorry, Lexington Avenue. Did you at one time have occupying those premises at 7540 Lexington Avenue the [161] defendants Mr. and Mrs. Frisone, here to my left?      A. Yes.

Q. Do you recall when they occupied those premises?

A. It was around the holidays, around—from around September until right after the holidays.

Q. Of what year?

A. I think, to my mind,—I tried to look it up, but I couldn't find it, but I think it was in '54. My wife would know, because she tends to that, about the property.

Q. Do you know the two defendants, Mr. and Mrs. Frisone, as man and wife?      A. Yes.

Mr. Jensen: You may have the witness.

#### Cross Examination

Q. (By Mr. Cantillon): Mr. Smith, you state that you don't recall what year it was in.

The Court: Mr. Cantillon, a little louder.

Q. (By Mr. Cantillon): Mr. Smith, you state you do not recall what year this tenancy took place in?

(Testimony of Benjamin Smith.)

Mr. Jensen: If the court please, I object to that. That is not his testimony.

The Court: That is all right. He will answer. Go ahead. You may answer. [162]

The Witness: It was in—I think it was '54.

Q. (By Mr. Cantillon): How do you fix that as being the year?

A. Well, we figured it up by different tenants that lived there, and we figured it down to about the time that they lived there.

Q. In other words, you figured it with your wife? A. Yes. With my wife, yes.

Q. Going back?

A. Yes, going back because—I had a checkbook, and a list of different things there, and they were thrown out and destroyed, because that was four or five years ago, and you don't just keep a lot of books for that length of time.

Q. Let me ask you this: Do you remember a woman coming to your home last March, the beginning of March of 1957, and do you remember that she talked to you and your wife, and that you told her, or your wife told her in your presence, that the records of the tenancies had been destroyed for 1954, and 1955, and 1953?

A. Well, no, I never remember that. I never remember any woman coming there, and I never remember in my presence that my wife ever told her that they were destroyed, that the records were destroyed.

Mr. Cantillon: I have nothing further.

The Court: All right. [163]

Mr. Jensen: You may step down, Mr. Smith.

The Court: You may step down, Mr. Smith. You may be excused.

(Witness excused.)

The Court: Call your next witness.

Mr. Jensen: Yes, your Honor. Mr. Govlya.

**JOHN GOVLYA, JR.**

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name, please.

The Witness: My name is John Govlya, Jr., G-o-v-l-y-a.

**Direct Examination**

Q. (By Mr. Jensen): Would you pronounce your last name for me?      A. Govlya.

Q. Govlya. Do I say it correctly?

A. That's right.

Q. Mr. Govlya, where do you reside, generally?

A. I live at 1531 Penmore Avenue in Venice, California.

Q. And you are employed by whom?

A. I am employed by the Southern California Edison Company, an electric utility company.

Q. How long have you been so employed? [164]

A. I have been employed by the Edison Company for approximately four and a half years.

Q. You were working there during the year 1954, then?

(Testimony of John Govlya, Jr.)

A. Yes, I started February 1, 1954, after I was released from the Army.

Q. And what is the nature of your work?

A. At present I am a bookkeeper for the Edison Company.

Q. Are you familiar with the books and records of the Southern California Edison Company?

A. Yes, sir.

Q. At the request of the United States—incidentally, you haven't seen me before today, have you?

A. No, sir. I had a heck of a time finding this place.

Q. At the request of the United States, and under a subpoena duces tecum, did you bring certain records with you here to court today?

A. Yes, sir.

Q. I will ask you whether included in those records is a connection, or a record of a connection for light in the name of Frisone for an address of 7540 Lexington Avenue, Hollywood, California?

A. Yes, sir. West Hollywood, California, we show.

Q. You call it West Hollywood?

A. West Hollywood 46. We don't serve Hollywood. We serve West Hollywood. [165]

The Court: Is Hollywood being segmentized now?

The Witness: We used to have Hollywood, but not today.

The Court: I see. All right.

(Testimony of John Govlya, Jr.)

Q. (By Mr. Jensen): You do show the street address, 7540 Lexington Avenue?

A. Yes, sir.

Q. And the name?

A. For which period, sir? For this period we show a party by the name of Anthony Frisone came in or phoned our West Hollywood office—it wasn't Anthony, it was Mrs. Frisone—she called our West Hollywood office, asking us to turn the service on at 7540 Lexington Avenue, West Hollywood, California, September 7, 1954.

Q. And how long did you render service to the Frisones at that address in 1954? Let's do it this way: When was that service connection terminated?

A. It was terminated on January 17, 1955.

Q. Was it continuous through that period of time?

A. Yes, it was.

Q. Were the bills paid?

A. Well, I don't—well, let me look here. We have changed our bookkeeping system since this period.

Well, it seems that there weren't any arrears on the several billings that they received. We bill every two months, and I believe they only received one billing, the [166] regular bi-monthly billing, and then the off-order, and the closing out was \$11.10. I don't know if that has been paid. It may have been.

Q. Mr. Govlya, do you have any given names on that account? I mean by that, any first names?

A. Yes. I have the on-order, which was Anthony

(Testimony of John Govlya, Jr.)

Frisone, and it was phoned to us, like I said, by Mrs. Frisone, giving the phone number of Hollywood 2-8032, and then the off-order was taken at the counter in West Hollywood on the 17th of January, the same day that we terminated the service.

Mr. Jensen: You may have the witness.

I wonder if we could mark the records for identification.

Mr. Cantillon: No objection.

Mr. Jensen: Might they be delivered to the clerk in an envelope?

The Court: Deliver them to the clerk.

The Witness: I need a receipt for them.

The Court: He will give you a receipt, and we will photostat them, because these are original records of a public utility company. Just leave those that you testified to.

The Witness: It may need some explaining to be done there.

The Court: All right. The clerk will give you a receipt and these will be returned to you. You don't need the subpoena.

The Witness: All right.

The Court: We don't keep these. The company knows.

The Witness: Just give me a receipt, and I will leave them.

The Court: We know you are required by the Public Service Corporation to keep records. The clerk will give you a receipt.

The Clerk: Government's 4, for identification.



(Testimony of John Govlya, Jr.)

(The document referred to was marked Government's Exhibit 4, for identification.)

The Witness: May I be excused, then?

The Court: As soon as you get the receipt. You want the receipt, don't you?

The Witness: Yes, sir.

(Witness excused.)

The Court: Let's go to the next witness.

Mr. Jensen: Mr. Murray Podolsky, will you come forward, please.

### MURRAY PODOLSKY

called as a witness by and on behalf of the Government, having been first duly sworn, testified as follows:

The Clerk: Your name, sir?

The Witness: Murray Podolsky, P-o-d-o-l-s-k-y.

The Clerk: And the given name? [168]

The Witness: Murray.

### Direct Examination

Q. (By Mr. Jensen): Mr. Podolsky, would you state your full name loud enough for all of us to hear, please?

A. Murray Podolsky. Accent the "d."

Q. Podolsky. I think that is about as close as I am going to get to saying it right. Where do you reside?

A. 13361 Blythe Street in North Hollywood.

Q. By whom are you employed?

A. Southern California Gas Company.

(Testimony of Murray Podolsky.)

Q. How long have you been so employed?

A. Five years.

Q. Mr. Podolsky, you are inclined to speak with a very soft voice. Would you push it up a little and talk a little louder?      A. Okay.

The Court: Lean back.

Q. (By Mr. Jensen): What is the nature of your employment, Mr. Podolsky?

A. I am a records control clerk.

Q. Have you been such during the course of your employment with Southern California Gas Company? [169]      A. Yes, I have.

Q. Are you familiar with the books and records of the Southern California Gas Company?

A. Yes, I have to be.

Q. Mr. Podolsky, you haven't seen me before today either, have you?      A. No, I haven't.

Q. At the request of the United States, and under a subpoena duces tecum, have you brought certain records here to court with you today?

A. Yes, I have.

Q. Do they pertain to an account for the premises at 7540 Lexington Avenue in Hollywood?

A. Yes, they do.

Q. And during the period of September, 1954, through the first part of January, 1955, what name is that account in?

A. It is under the name of N. Frisone.

Q. When was that account opened?

A. The party turned on on September 3, 1954.

Q. And when was that account closed?

(Testimony of Murray Podolsky.)

A. It ran through to January 17, 1955.

Q. And was it a continuous account in that name through that entire period?

A. Yes, it was. [170]

Mr. Jensen: You may cross examine.

Mr. Cantillon: I wonder if the records might be marked for identification, the records from which the witness testified?

The Court: Yes, they may be marked.

The Witness: I have some photostats, your Honor.

The Court: Oh, what a smart record clerk you are. The witness furnishes us with photostats.

Will you gentlemen take a look and see if we can use them? We try to educate these public utilities and public official representatives to that, but sometimes they don't remember.

Mr. Jensen: Let me ask him a question. Have you compared the photostats with the originals?

The Witness: Yes.

Q. (By Mr. Jensen): Are they the same?

A. Yes, sir, they are.

Mr. Jensen: We will accept them on that, your Honor.

The Clerk: Government's Exhibit No. 5.

(The exhibit referred to was marked Government's Exhibit 5, for identification.)

The Witness: I thought you might want to have the meter sheet also. This (indicating) is the turn-on date, and this is the closing date.

Mr. Cantillon: He is just explaining that this

(Testimony of Murray Podolsky.)

wasn't on the record. I was trying to figure whether I wanted this or not, and he was telling me. [171]

The Witness: Then Anderson was the occupant in the apartment prior to this.

The Court: He would not want that.

Mr. Cantillon: I don't need this.

The Court: We will let you keep your records, and these four photostats will be accepted as the correct representation of the records kept showing this.

Mr. Jensen: I might announce to these two gentlemen that if they will go to the reception desk at the United States Attorney's office on the 6th floor, they can draw their witness fees up there.

The Court: That is all right.

The Witness: Is that all, sir?

The Court: You may be excused, yes, sir.

(Witness excused.) [172]

\* \* \* \* \*

NORA MATHIS FRISONE

called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

The Court: Would it be more convenient for you if we put a chair there so you would not have to climb these stairs?

The Witness: I think I will be all right, your Honor. Thank you.

The Court: You think you will be all right?

The Witness: Yes, I think so. I need to stand, do I?

The Court: You may sit down when you take the stand. That is all right.

The Clerk: Your full name, please?

The Witness: Nora Frisone.

The Clerk: No middle name?

The Witness: No, sir.

The Clerk: Your middle name is not Mathis?

The Witness: Well, that was my maiden name, sir. [322]

The Clerk: Thank you.

The Court: Now, just lean back and be as comfortable as you can.

Direct Examination

Q. (By Mr. Cantillon): Mrs. Frisone, you are the wife of the defendant, Anthony Frisone?

A. Yes, I am.

Q. When were you and Mr. Frisone married?

A. July 21, 1956.

Q. Where was that marriage?

A. In Henderson, Nevada.

(Testimony of Nora Mathis Frisone.)

Q. Now, you testified at your husband's trial in March, 1957. Do you remember testifying?

A. Yes, I do.

Q. At that time you were under bond as a material witness for the Government?

A. Yes, I was.

Q. And you testified as a witness for the defense? A. Yes, I did.

Q. Now, you were asked the following question,—

Mr. Jensen: May I have the record page?

Mr. Cantillon: I am referring to the indictment, Count I, lines 18 to 21: [323]

“Q. Nora, did you work in the house Mi Rancho at Rosarita Beach?

“A. I was there one night.”

Now, is that true, that you were there at Mi Rancho, Rosarita Beach, one night?

A. That's true.

Q. And did you work there?

A. Yes, I did.

Q. With what occupation?

A. As a prostitute.

Q. You were asked the following questions, and to which you gave the following answers:

“Q. Do you recall seeing Anthony Frisone at Mi Rancho?

“A. No, I do not.

“Q. Can you state definitely at the time that you were there that he was not there?

“A. Yes, I can.

(Testimony of Nora Mathis Frisone.)

“Q. Then it is your testimony that he was not there?

“A. I did not see him there.

“Q. You were, you say, at Mi Rancho for one night?      “A. Yes, I was.”

Now, is that testimony true? [324]

A. That testimony is true.

Q. Now, where were you immediately before you went to Mi Rancho?

A. I believe, if I remember right, I was in Tijuana.

Q. And were you working in Tijuana?

A. Yes, I was.

Q. And at the same occupation?

A. Yes, I was.

Q. For how long had you been in Tijuana?

A. Well, the best I can remember, that also—I think I had been there about a week.

Q. Now, let me ask you, do you remember the date that you went to Mi Rancho?

A. No, I do not.

Q. Do you remember the month?

A. I only know it was in December.

Q. Was it before or after Christmas?

A. Well, it must have been after Christmas, because I spent Christmas in Tijuana.

Q. And where were you working in Tijuana?

A. At the Mayer Hotel.

Q. At the Mayer Hotel?      A. Yes.

Q. And were you working with anybody?

A. At that time I was alone. [325]

(Testimony of Nora Mathis Frisone.)

Q. And had you gone to the Mayer Hotel at anybody's instigation? How did you get there?

A. Well, I had been working there off and on with Ginger.

Q. With Ginger, the girl, Norma Jean Scholes, who testified here earlier? A. Yes.

Q. How long had you been working off and on at the Mayer Hotel in Tijuana with Ginger?

A. Well, several months.

Q. How did you get from Tijuana, Mexico, to Mi Rancho?

A. I believe it was with Peter DiLeo, and Ruby, and a young lady named Kathy.

Q. Now, you heard Janet Prideaux and Norma Jean Scholes both testify at the prior trial and at this trial that they saw you and Mr. Frisone together at Mi Rancho. Now, is that true? Were you together with him at Mi Rancho?

A. It couldn't possibly have been true, because I didn't see him at Mi Rancho.

Q. Now, was it by pre-arrangement with somebody that you went to Mi Rancho?

A. Yes, it was.

Q. And with whom?

A. Well, I believe that I had received word from Mr. DiLeo that the place was opening, and asked if I would like [326] to be there, and I had stated, yes, that I would.

Q. Incidentally, how long had you worked as a prostitute, if you had worked as a prostitute, prior to December of 1954?



(Testimony of Nora Mathis Frisone.)

Mr. Jensen: If the court please, I will object to that as being immaterial. It is too remote to the issues in this case.

Mr. Cantillon: It is on the subject, your Honor.

The Court: I will sustain the objection.

Mr. Cantillon: May I make an offer of proof in that regard?

The Court: No.

Mr. Cantillon: I beg pardon?

The Court: The question itself is sufficient.

Mr. Cantillon: Is the objection sustained?

The Court: Yes, I sustained the objection, and the question you asked itself indicates what you intend to prove.

Q. (By Mr. Cantillon): What areas had you worked in?

The Court: It is not material at all.

Mr. Cantillon: It is material, your Honor.

The Court: As I said before, we are not trying a Mann Act case. We are trying a perjury case.

Mr. Cantillon: I think it is material, your Honor, on the subject of intent, the specific intent to wilfully falsify.

The Court: I have already ruled, and the record will indicate it. [327]

Q. (By Mr. Cantillon): When had you first met this Ginger Scholes, Norma Jean Scholes?

Mr. Jensen: If the court please, I don't know, but perhaps my hearing is defective. I can't hear counsel, and I am sitting right alongside of him.

(Testimony of Nora Mathis Frisone.)

The Court: Yes, speak a little louder, Mr. Cantillon.

Q. (By Mr. Cantillon): When did you first meet Norma Jean or Ginger Scholes?

A. I believe it was in the first part of 1954 some time, either the early winter or spring.

Q. Were you working at that particular time?

A. Yes, I was.

Q. And in what area, and at what occupation?

Mr. Jensen: If the court please, the same objection, that it is too remote, and immaterial and irrelevant.

The Court: I will sustain the objection. It is not material in this case, and would not be material in a Mann Act case either, because the offense may be committed only by transporting a woman.

Mr. Cantillon: It would not be material? We went all through it last time, relative to the prior and subsequent conduct, and I am offering it, your Honor, on the proposition again, as I say, of the wilfulness, the intent.

The Court: The fact that this woman was a prostitute [328] and had been for quite a long while doesn't bear on the issue before us one way or another.

Mr. Cantillon: I believe, your Honor—

The Court: You have brought it in, and I have allowed you to ask her, but how long she has been is not material at all. It would not be material in a Mann Act prosecution either. This does not go to motive or intent at all.

(Testimony of Nora Mathis Frisone.)

Mr. Cantillon: Will the court let me make an offer of proof, please, and I believe I can convince the court?

The Court: You will have to do it outside the presence of the jury. Step up here, and make your offer of proof, although I may say we discourage offers of proof.

(The following proceedings were had between court and counsel at the bench, outside the hearing of the jury:)

Mr. Cantillon: Perhaps your Honor discredits my offer of proof, but I am making it for the court's benefit as much as mine.

I anticipate this woman will testify in some respects that she was in error, that what she testified to wasn't true, so I want to establish that she was a prostitute during three or four years, during which time she lived with many men and made numerous trips to and from Mexico; that this particular one night she was at Rosarita Beach was about as insignificant an incident in her life as, I imagine, pulling on shoes and socks is for all of us.

The Court: Go ahead.

Mr. Cantillon: And I am offering it to show that at the time she testified at the prior trial she was not intimate with Mr. Frisone until some time after the first of the year of 1955, she was honestly mistaken as to when their association commenced, and in reality did become intimate, and her inability to recall it prior to the records being put in evidence was attributable to the fact that

(Testimony of Nora Mathis Frisone.)

she had led an irresponsible life, and had lived as a prostitute throughout the various cities of California, Nevada, and in Tijuana, and in Florida, and lived with many men and resided in many houses of prostitution before and subsequent to meeting this man.

The Court: I may say this: In the first place, that would only be material if they brought it out. It might be material as an explanation, and if she states that some of this testimony was not true that is in the second count, then she may give that as an explanation, that she has had affairs with so many men that one more does not make any difference.

Mr. Cantillon: Then my offer of proof was not fruitless.

The Court: There is an eastern circuit that says that you can discount the testimony in a Mann Act case by saying, "Why should the man that had taken his mistress across the line do that?" And one of the dissenting judges said, "Why should he transport her to do things he had been doing [330] for years?" But that is argument, and not evidence, and I don't think we can go into it at the present time. If she admits——

Mr. Cantillon: Then we will get to that.

The Court: ——and gives that as her reason, that that had been the case, then that will be permissible, but you can't anticipate that by painting her in such a manner in advance.

(Testimony of Nora Mathis Frisone.)

Mr. Cantillon: At any rate, I will proceed to Count II, and then go back to this subject.

The Court: Yes, but to do it now is out of line, you see.

Mr. Cantillon: I see. Thank you.

(Thereupon the proceedings were resumed within the hearing of the jury:)

The Court: I am sorry, ladies and gentlemen, we are taking so much time, but these questions arise, and counsel at times desire to amplify their position in the hope that the court might, in the light of a fuller explanation, change its ruling.

The ruling stands. Proceed to the next question.

Mr. Cantillon: Very well, your Honor.

Q. Mrs. Frisone, at the last trial you were asked this question:

“Q. When was that, approximately?”

“A. That was in the spring and summer of 1954.

“Q. Did you know Mr. Frisone at that time?”

“A. No, I did not.” [331]

Now, did you know Mr. Frisone in the spring and summer of 1954? A. No, I did not.

Q. Now, you were also asked the question:

“Q. Now, some time in the fall of 1954 did Ginger take up a residence in San Diego County?”

And you answered, “Yes.”

And you were asked, “And did you go to that residence?”

And you answered, “Yes, I was there.”

Now, is that true?

A. That is also true.

(Testimony of Nora Mathis Frisone.)

Q. Now, you were asked:

“Q. Did you know Mr. Frisone during this period of time while you were operating out of Ginger’s house in San Diego as a prostitute?”

Now, in that connection, let me ask you this: How many times did you operate in San Diego as a prostitute with Ginger, and over what period of time?

Mr. Jensen: I will object to that as being immaterial and irrelevant.

The Court: I am going to sustain the objection at the present time, but you can go back to the question she was asked, and then if she wants to give details and an explanation of her action, she may. [332]

Mr. Cantillon: All right. I will repeat the question.

The Court: I mean your question which you are reading from the indictment.

Mr. Cantillon: Yes, sir.

The Court: I am merely sustaining the objection at the present time to your interpolation, shall I call it,—to the interpolated question. Go ahead.

Q. (By Mr. Cantillon): (Reading):

“Q. Did you know Mr. Frisone during this period of time while you were operating out of Ginger’s house in San Diego as a prostitute?”

And you answered, “Casually.”

Now, let me ask you this: How many times, if there was more than one time, and over what periods of time, if it extended over any periods, did

(Testimony of Nora Mathis Frisone.)

you work as a prostitute out of the home or house of Ginger in San Diego?

Mr. Jensen: Just a moment. I will object on the same ground. It is immaterial and irrelevant.

The Court: I think if she wants to explain what she means by "casually," she may do that, but again it is her relationship to the defendant which is the gist of this charge, this assignment of perjury in that count. I haven't been following it, and it may be——

Mr. Cantillon: If your Honor will read page 4, lines 24 through 28, and my question, I think [333] perhaps the court might reconsider the ruling.

The Court: No, I think the very answer she gives afterwards shows that the relationship she is talking about is the relationship to Mr. Frisone. I will sustain the objection.

You may proceed along the lines of these questions, as you did before.

Q. (By Mr. Cantillon): You then stated, "I think I had met him at the La Madelon where he was working as a bartender."

The Court: Wait a minute. You didn't read the question. After her answer, "Casually," you didn't read, "When you say 'casually' what do you mean by that?"

Mr. Cantillon: This is direct examination, and I didn't particularly care to read that. I wanted to back up to the time factor, and that is what I was attempting to get at.

The Court: What is that?

(Testimony of Nora Mathis Frisone.)

Mr. Cantillon: This is my direct examination, and I am going to back up to the time factor in a moment.

The Court: But you can't split a thing of this character by interpolation. You have got to follow it as it is given, by asking each question, and then if an explanation is in order, she can make it, but you can't just do that out of an indictment. This is not examining an ordinary witness. This is a categorical denial of statements—no—a categorical defense, rather, of statements that she made, and, therefore, you are allowed to ask the categorical question, "Is it true [334] or is it not true?"

Mr. Cantillon: You see, your Honor, that is where we are getting a little apart here. This is not a case of—

The Court: We are not getting apart. You are getting apart.

Mr. Cantillon: This is not a categorical denial, your Honor, and it is not intended to be, and I should not be confined to reading the indictment.

The Court: If you don't want to read the indictment, then when you read any portion of this, if you want to skip a question and answer, yes, but you cannot skip a question and give merely the answer, because that is the context in which the answer was given.

Mr. Cantillon: I am going to ask the question in this particular fashion:

Q. At the last trial, Mrs. Frisone, among other things, you made the statement to the effect that



(Testimony of Nora Mathis Frisone.)

you had met your husband at the La Madelon, where he was working as a bartender. Now, is that true?

Mr. Jensen: Now, just a moment. If this is not for the purpose of a categorical denial, I will object that it is leading and suggestive.

The Court: I will sustain the objection. The question should be asked right in the form in which it was asked.

Q. (By Mr. Cantillon): When did you meet your husband, [335] Mrs. Frisone?

A. That's not too clear in my mind, but as far as I can ascertain, it was in 1954 some time, while he was working as a bartender at the La Madelon .

Q. Now, at the previous trial you testified, in substance, that you had not become intimate with Mr. Frisone until some time in the early part of 1955. Now, do you have a reason for saying at this particular time that——

The Court: No, don't tell her. Ask her if it is true, in the same manner. You cannot make this kind of an examination. She ought to answer categorically whether that statement was true, or whether she believed it to be true at the time, and, if not, and in either event, she can explain.

Q. (By Mr. Cantillon): At the time that you made the statement, did you believe it to be true?

Mr. Jensen: Just a moment. I don't think the record shows what the reference is to the statement.

The Court: No. You have got to read the statement, so we will know what we are talking about.

(Testimony of Nora Mathis Frisone.)

Read the statement so that we will know what we are talking about. Go ahead.

Mr. Cantillon: I am at a complete loss, Judge, at this particular point to know how to proceed.

The Court: I am sorry. I am not running a law school. [336] When a person is charged directly, you have a right to ask her the question, and ask her if she gave the answer. If she says it is true, then that ends it. That is what you have done with the other.

You cannot start in by taking questions in one manner, and then omitting others by summarizing them. You can't do that in a perjury case, because the perjury charge is statements made specifically in a particular manner. You started out right. As to questions that she knew in advance she would answer, it is true, but now that you are in doubt you are changing your method, and it is not permissible. You may skip the entire subject, if you don't want to cover it. You don't have to.

Mr. Cantillon: Well, I don't want to do so.

The Court: Then you will have to ask the question and answer in the manner in which she was asked at the trial, and if she wants to give an explanation other than an answer "Yes," or "No," she may, but you will have to ask the question in the manner in which it is set forth in the indictment. If this indictment had not set forth that she was asked about this and she answered in this manner, it would have been insufficient, because the law of perjury requires that the specifications be in the

(Testimony of Nora Mathis Frisone.)

exact words in which the question was asked and answered.

Mr. Cantillon: I am willing to learn, Judge. Don't [337] misunderstand me.

The Court: Well, let us not go into that. Don't start to martyrize yourself now, you know.

Mr. Cantillon: No, but I will start back up with the last question.

The Court: You may skip any of them, but you cannot read an answer unless it is in the words she gave, and unless you read the question to which that was the answer.

Go ahead.

Q. (By Mr. Cantillon): I am referring now to page 4, line 29:

“Q. When you say ‘casually’”—this is the question—“what do you mean by that?”

“A. I think I had met him at the La Madelon where he was working as a bartender.”

Now, is it true that you met your husband at the La Madelon, where he was working as a bartender?

A. Yes, sir. I have already stated that.

Q. “Had you ever been out with him”—then you were asked the question, “Had you ever been out with him socially or dated him?”

“A. No, I don't think so.”

Well, now——

Mr. Jensen: Do we have a question before the witness?

The Court: No. He is trying to think how to frame the [338] question. Give him a chance.

(Testimony of Nora Mathis Frisone.)

Mr. Jensen: Certainly.

Q. (By Mr. Cantillon): (Continuing) Now, is it true that during the period of time while you were operating out of Ginger's house that you had never been out with your husband socially or dated him? Do you understand the question?

A. Not quite.

Mr. Jensen: Might I say as to the reference in the transcript to this, unless it is a categorical denial, I will object as being leading and suggestive, your Honor.

The Court: I think it is permissible to ask the question. Go ahead. You may answer.

The Witness: Well, I would like the question re-read, if you don't mind re-reading it, please.

The Court: Read the last question, please.

(The question referred to was read as follows: "Q. 'Had you ever been out with him'—then you were asked the question, 'Had you ever been out with him socially or dated him?")

'A. No, I don't think so.'

Now, is it true that during the period of time while you were operating out of Ginger's house that you had never been out with your husband socially or dated him? Do you understand the [339] question?")

Q. (By Mr. Cantillon): Do you understand it now?

A. Yes, I believe I understand the question, but it is rather a difficult question to answer because of the fact that there was more than one time when I

(Testimony of Nora Mathis Frisone.)

worked with Ginger in San Diego at different places, and, therefore, it is rather hard for me to establish what sequence the events occurred in. In other words, I don't quite—unless I know what specific incident is being referred to, I can't say whether I had met him yet or whether I hadn't.

The Court: Well, the previous question to which this relates refers specifically, or asks specifically, "Did you know Mr. Frisone during this period of time while you were operating out of Ginger's house in San Diego \* \* \*?"

The Witness: Yes, sir, but that doesn't say when.

The Court: Well, the previous question relates to 1954. You see, these are—I will show her. May I show her this?

Mr. Cantillon: Surely, your Honor.

The Court: Take a look at this. You see, this is the sequence.

The Witness: Yes, sir.

The Court: And they are talking of 1954. You see, the first question you have already answered, so that is what they are talking about.

The Witness: Well, you see, now here it states when, [340] but just until I saw it, I didn't know what part of 1954 he was speaking of.

The Court: All right.

The Witness: Because, as I said, there were separate incidents.

The Court: All right. Now, how do you want to answer, or what do you want to add to what you have already said?

(Testimony of Nora Mathis Frisone.)

The Witness: I believe that in the fall of 1954 I had met my husband when he was working at the La Madelon as a bartender.

The Court: All right.

Q. (By Mr. Cantillon): At the time that you—let me ask you this: You were asked the question: “Isn’t it a fact that on or about the 27th or 28th of December of 1954 that Anthony Frisone drove you across the Mexican border to Tijuana?”

And you answered, “It is not a fact.”

Then you were asked the question, “You would say that it is not true, then?”

“A. It is not true.”

Now, is it true or is it not true that he drove you across the border to Mexico on or about the 27th or 28th of December, 1954?

A. It is not true.

Q. Then you were asked, “Do you say that you knew the [341] defendant Frisone only casually?”

To which you answered, “Yes.”

And then you were asked, “When did your acquaintance become more intimate?”

And you answered, “Two or three months later.”

And then you were asked the question, “Some time early in 1955?”

To which you gave the answer, “Yes.”

Now, is it true that you did not become intimate with Mr. Frisone until early in 1955, or is that false?

A. I believed at the time that I testified that

(Testimony of Nora Mathis Frisone.)

that it was true, but I have since found out that it was not true.

Q. And what was the basis of the facts that you relied upon in the belief that that was true, at the time that you testified it was true?

A. Well, there was—as I said before, there were a lot of things that I couldn't put in exact sequence. That was a pretty busy time during my life, and things were happening so quickly, and in such rapid succession, that I couldn't quite place which came before which. And, therefore, at the time—previous to the trial I was certain that it was in the beginning of 1955 that we had become intimate, but after we had followed your advice and sent an investigator to see the landlady at the first place where we had lived together, and she had stated that she had no idea when it was except [342] just that it was in the winter, I was positive that it was in January, 1955, because I had nothing else to go on.

Q. When was the first time that you were called upon to fix a date as to which time you and Mr. Frisone became intimate?

A. Well, if I remember correctly, and I am not sure that I do, it was before the trial in 1957.

Q. Now, did you have any discussions with anyone in attempting to fix a time at which you and Mr. Frisone became intimate?

A. Well, Mr. Frisone and I discussed it between ourselves, and we couldn't exactly agree upon when it was because neither of us knew for sure.

Q. Was there some disagreement in that dis-

(Testimony of Nora Mathis Frisone.)

cussion?           A. Yes, there was.

Q. What was the disagreement?

A. Well, he felt that it was before the incident, and I felt that it was after the incident.

Q. Now, by "incident," what are you referring to?

A. The Rosarita Beach incident.

Q. Incidentally, did you and do you now, other than in connection with these trials, associate Anthony Frisone in any way with the Rosarita Beach incident?

A. I did not then, and I do not now.

Q. Prior to this night you spent at Rosarita Beach, [343] you state you had worked as a prostitute; is that correct?           A. That's true.

Q. And did you work as a prostitute after that event, having gone down there one night and returned?           A. Yes, at a later date.

Mr. Jensen: Excuse me. I would appreciate it if the court would indulge me by having that question re-read.

The Court: Read it, please. .

(The question and answer were read.)

Q. (By Mr. Cantillon): Now, had you ever resided with any person other than Anthony Frisone prior to December 27th or 28th, of 1954?

A. Yes, several.

Q. And over what period of time?

Mr. Jensen: If the court please, I think this is immaterial and irrelevant.

The Court: Yes, I will sustain the objection. She



(Testimony of Nora Mathis Frisone.)

has already stated what her occupation was, and, of necessity, it would imply associating with men either on a temporary basis or a permanent basis, and practicing what, euphemistically, George Bernard Shaw called "Mrs. Warren's profession." So I can't see that going into more detail has any bearing upon the issues before the court.

Mr. Cantillon: May I renew the offer of proof at this particular time that I previously made? [344]

The Court: That is right. The offer will be rejected upon the grounds I have stated in the record.

Q. (By Mr. Cantillon): Now, you were asked, "It is your testimony, is it not, that Mr. Frisone was only casually known to you during the summer of 1954?"

And you answered, "That is right."

Now, is that true, that he was only casually known to you in the summer of 1954?

A. I believe that to be true.

Q. And you believe it to be true now?

A. Yes, I do.

Q. Now, between December 27th or 28th, 1954, and March 26, 1957, did you and Mr. Frisone keep company with one another from time to time?

A. Now, are you referring to between December, 1954, and the time of the trial?

Q. Yes. A. Yes, we did.

Q. Was this a steady sort of a romance. I am talking now preceding the marriage.

A. No, sir, I wouldn't say it was very steady.

Q. And during this period of time, did you and

(Testimony of Nora Mathis Frisone.)

Mr. Frisone occupy various residences together?

A. Well, several that I can think of, and I know there were several others that I can't think of. [345]

Q. How many altogether, would you say?

A. Well, I can remember—I can remember four.

Q. And is that between the time of December and the time you were married? A. Yes.

Mr. Jensen: If the court please, I hesitate to interrupt but counsel is leading considerably.

The Court: That is not objectionable, because if she does not remember the time and the number of places, he can help her with dates.

By four, you mean including the one which the Smiths testified about?

The Witness: No, sir, I mean independently.

The Court: In addition to that one?

The Witness: Yes.

The Court: Four others?

The Witness: Yes.

The Court: That would be five?

The Witness: Yes.

The Court: I see. All right.

Q. (By Mr. Cantillon): During the period of time that intervened from the one night you were at Rosarita Beach and the trial last March a year ago, did you work at the occupation of prostitution?

A. Yes, sir, up until the time that I was married. [346]

Q. And was this confined to any particular part of the United States?

(Testimony of Nora Mathis Frisone.)

Mr. Jensen: If the court please, I will object to that as being immaterial and irrelevant.

Mr. Cantillon: It is on the proposition of her recollection, your Honor, and the places.

The Court: All right.

Mr. Cantillon: I mean, if the court feels this——

The Court: No, I will let her answer that. I will let her answer that.

The Witness: Would you read the question for me, please?

(The question was read.)

The Witness: No, it wasn't.

Q. (By Mr. Cantillon): While you were working here in the Southern California area, did you meet this girl, Janet Prideaux——

A. Yes.

Q. ——that testified?

A. Yes, I did.

Q. And did you observe her using any barbiturates or pills?

A. Yes, I did.

Mr. Jensen: Just a moment. I will object to the word "barbiturates." It would be a conclusion on the witness' part. [347]

The Court: She wouldn't know. Seconal, of course, isn't a drug. Having been in the hospital three times, I know that seconal is not a barbiturate.

Q. (By Mr. Cantillon): Did you see her taking a lot of pills?

A. Yes, I did.

Q. Was she commonly referred to as Pillhead or Dingaling?

A. She certainly was.

Mr. Cantillon: I have no further questions.

(Testimony of Nora Mathis Frisone.)

Mr. Jensen: Your Honor, might we take our afternoon recess before the cross?

The Court: All right, so that you won't be interrupted.

Do you need help to get down?

The Witness: No, your Honor.

The Court: All right. May it be stipulated the usual admonition has been given?

Mr. Jensen: Yes, your Honor.

Mr. Cantillon: So stipulated.

The Court: We will take a short recess.

(A short recess.)

The Court: Let the record show the jurors and two alternates in the box, and the defendants in court with their counsel.

You may proceed, Mr. Jensen.

Mr. Jensen: Thank you, your Honor. [348]

#### Cross Examination

Q. (By Mr. Jensen): Mrs. Frisone, do you recall the conversation that the two FBI agents testified as having with you in Jacksonville, Florida in May of 1956?

A. Are you asking me, do I recall?

Q. Yes. A. Yes, I do.

Q. And did you state to those two officers that you had been living with Anthony Frisone for two years up to the time of that conversation, which was in May of 1956? Did you make such a statement in substance or effect to them?

A. It's possible that I made such a statement.

(Testimony of Nora Mathis Frisone.)

Q. That would mean that you would be living with him from May of 1954 on, wouldn't it?

A. I don't believe I stated it definitely, that it was two years. I didn't state any definite amount of time. I said, "Maybe a couple of years," which could mean most anything.

Q. I take it, in respect to knowing Mr. Frisone casually in the fall of 1954, that the testimony you gave in the prior trial is false; is that correct?

A. I have found it is.

Q. And you now recall having lived with Mr. Frisone at the residence on Lexington Avenue that was rented to you [349] by the Smiths?

A. I recalled living with him on Lexington Avenue. What I didn't recall was the——

Q. No, just a moment.

A. ——the exact time.

The Court: No, she has a right to do that. Finish your answer.

The Witness: What I started to explain was that I recalled living at that residence. What I didn't recall was the time that the residence occurred.

Q. (By Mr. Jensen): Do you recall Mr. and Mrs. Smith?

A. Yes, I recall Mr. and Mrs. Smith.

Q. Was this the first of these five places that you lived at with Mr. Frisone?

A. I have already stated that that was the first place that we lived together.

(Testimony of Nora Mathis Frisone.)

Q. And you don't recall the very first place that you lived with him?

A. No, as I have stated, it was the Lexington Avenue address.

The Court: I think you misunderstood the witness, Mr. Jensen.

Mr. Jensen: Perhaps I did.

The Court: She said that was the first time that they lived together. [350]

Mr. Jensen: At the Lexington Street address?

The Court: At the Lexington Avenue address. That is what I understood you to say. Isn't that what you said?

The Witness: Yes, sir.

The Court: And the other four places were after that?

The Witness: Yes, sir.

Q. (By Mr. Jensen): The Lexington Street address was the first place you lived with Mr. Frisone? A. Yes, it is.

Q. And you lived with him there through September, October, November and December?

A. No, I didn't reside there all that time.

Q. You lived there all that time, didn't you?

A. No, I didn't.

Q. Were you gone from those premises for any substantial periods of time?

A. I certainly was.

Q. How long?

A. As I recall, I think six weeks or two months.

Q. Continuously?

(Testimony of Nora Mathis Frisone.)

A. I believe so, unless I might have gone back to pick up some of my clothing that I had left there.

Q. At what period in that time?

A. I believe, if my memory serves me correctly, I believe that Mr. Frisone and I had quite a serious—— [351]

Q. Just a minute. All I asked you was the time that you were absent.

A. I am trying to explain it to you, if you don't mind.

The Court: That is all right. If an incident in their relationship helps her to recall the dates, she has a right to refer to it. Go ahead.

Q. (By Mr. Jensen): Can you give me the months, please?

A. If you will let me finish my answer.

The Court: Yes, I told you you could finish your answer.

The Witness: Thank you, your Honor.

The Court: Go ahead.

The Witness: As I was saying, I believe we had quite a serious disagreement some time in the month of November.

The Court: All right. You think you left then?

The Witness: Yes, whenever——

The Court: You think it was in November?

The Witness: It was in November.

The Court: And you think you can say how long you were gone?

The Witness: Well, it was—I know I was gone

(Testimony of Nora Mathis Frisone.)  
until after the Rosarita Beach incident occurred.  
I believe it was some time in January.

The Court: Then you went back. Did you go back to the address? [352]

The Witness: No, sir, because at that time we moved to another address.

The Court: Then you say you didn't go back to that address at all. That would make it more than two months. I think the evidence shows that he left,—what was it?

Mr. Jensen: The rental was terminated in the first part of January, your Honor.

The Witness: January 17th was the date.

The Court: January 17th, wasn't it?

The Witness: Yes.

Q. (By Mr. Jensen): So you were absent from those premises from some time in the first part of November through the balance of the rental period, even past the date in January when the rental was terminated?

A. As I stated before, I might have gone back to collect some things that I had left there.

The Court: But not to remain there for any length of time?

The Witness: No, sir, not to remain there for any length of time.

Q. (By Mr. Jensen): Do you recall when you went back?

A. I can't recall the exact date.

Q. Were you present in that house just before Christmas of 1954?



(Testimony of Nora Mathis Frisone.)

A. As I said, it is possible that I was. [353]

Q. Do you recall a conversation that you had with Mrs. Smith just prior to Christmas of 1954, in substance and effect, that you were going to be gone over the Christmas holidays, that you were going to visit your mother?

A. It is quite possible that I made such a statement. I didn't believe it was anyone else's business if we were quarreling.

Q. And you say that you had been absent from November up until that time?

A. I said except for an occasional trip back to—excuse me—to pick up some clothing.

Q. How long were you down in Tijuana prior to going to Rosarita Beach?

A. I have already stated I believe I was there about a week.

Mr. Jensen: May I have just a moment, your Honor?

Q. How long before you took up residence with Mr. Frisone did you start going out with him and dating him,—how long before you lived with him?

A. As I remember, I don't believe we ever had but just one or two more just social dates.

Q. What period of time did you know him before you started living with him?

A. Only a short time. I would say maybe a month or so.

Q. So you would have known him some time in August? [354]

A. Yes, that's possible.

Q. You say you did not see nor spend any time

(Testimony of Nora Mathis Frisone.)

with Anthony Frisone at Rosarita Beach; is that correct?

A. I have stated that several times.

Q. And, I take it, you did not spend the night with him there, the night that you were there?

A. I did not.

Q. Mrs. Frisone, you mentioned that you sent an investigator out to the Smith's house to determine the date that you had stayed there; is that correct?

A. That's correct.

Q. Did you hire that investigator?

A. I don't know just exactly what those arrangements were.

Q. Were the arrangements made with you, Mr. Frisone, or Mr. Cantillon?

A. I believe Mr. Cantillon made the arrangements for us.

Q. Did you know the investigator yourself?

A. I had met her.

Q. After she came back from the Smiths' place, did she talk to you, or did you talk to her?

A. She talked to us.

Q. And she told you that the Smiths recalled your being there, but couldn't recall the date? [355]

A. That's true.

Q. Did she also tell you that the Smiths didn't have any records of when you were there?

A. She told us that the Smiths had stated that they did not have the receipts on hand, and that they could not recall the exact time.

Q. Isn't it a fact, Mrs. Frisone, that after you

(Testimony of Nora Mathis Frisone.)

learned that, that you felt it was safe to fabricate when you had first started living with Mr. Frisone?

A. Mr. Jensen, I don't think it is ever safe to fabricate.

Q. You say that you did not then feel that it was something you could get away with?

A. No, sir, I did not feel it was something that I could get away with. I used it merely as a basis to try to orient myself, so that I could discover in what sequence these things happened.

Q. Why didn't you go out and see Mr. and Mrs. Smith yourself?

A. Well, there were several reasons why I didn't go to see Mr. and Mrs. Smith myself. To begin with, I didn't have the time. I was also advised by my attorney that because this was a Federal case, it might be better if we sent someone else.

Mr. Jensen: I have no further questions.

The Court: Any redirect, Mr. Cantillon? [356]

Mr. Cantillon: No, your Honor.

The Court: All right. Step down, please.

(Witness excused.)

The Court: Call your next witness.

## MARCELLE EDWARDS

called as a witness by and on behalf of the defendants, having been first duly sworn, testified as follows:

The Clerk: Your full name, please?

The Witness: Marcelle Edwards.

The Clerk: Marcelle?

The Witness: Yes, sir. M-a-r-c-e-l-l-e.

The Clerk: Thank you.

## Direct Examination

Q. (By Mr. Cantillon): Mrs. Edwards, directing your attention to the people sitting at the defense counsel table, Mr. and Mrs. Frisone, have you seen them before? A. Yes.

Q. Do you recall the date that you first saw them? A. Yes, it was March 23, 1957.

Q. And whereabouts?

A. In your office, the Cantillon office.

Q. Had someone summoned you to the office?

A. Yes.

Q. Do you remember who it was?

A. Mr. Cantillon.

The Court: There are father and son there?

The Witness: Well, it was Jimmy's father.

The Court: Jimmy's father. All right.

Q. (By Mr. Cantillon): Was I present?

A. Yes.

Q. And were you asked to contact some people on Lexington Avenue? A. Yes, I was.

Q. Do you recall what the name of the people was? A. Mr. and Mrs. Smith.

(Testimony of Marcelle Edwards.)

Q. Do you remember what instructions you were given relative to contacting them?

Mr. Jensen: I will object to that. It is hearsay, if your Honor please.

Mr. Cantillon: It was in the presence. It was in the presence of the Frisones, and is offered, your Honor, for the limited purpose on the question of wilfulness.

The Court: She may answer. Are you a professional investigator?

The Witness: Well, I am an investigator for Richard Cantillon.

The Court: I see. All right. [358]

The Witness: Shall I answer?

The Court: Yes, you may answer.

The Witness: I was told to go to see the landlady, which was Mrs. Smith, or Mr. Smith, to try to find out what date the Frisones had lived at that address.

The Court: All right. That is sufficient.

Q. (By Mr. Cantillon): Following that, did you go to the address? A. I did.

Q. Did you see Mr. or Mrs. Smith, or Mr. and Mrs. Smith? A. I saw Mrs. Smith.

Q. Do you recall the date it was that you went out to see her?

A. Yes, sir. It was the 23rd. I went right after leaving the office.

Q. How much time did you spend with her?

A. I would say about a half an hour.

Q. And did you talk to her about Mr. and Mrs.

(Testimony of Marcelle Edwards.)

Frisone?           A. Yes, I did.

Q. Did you ask her if she could tell you when they were tenants at her apartment house?

A. Yes, I did ask her.

Q. And what, if anything, did she say?

A. She told me she remembered them very well, because [359] they had been such a nice couple, but that she did not keep any records, and it could have been either in 1953, '54 or '55. She did remember that it was some time in the winter.

Q. Did she give you any idea as to the length of time they had been there?

A. She said it was about three or four months.

Q. Following that conversation with Mrs. Smith, did you report the substance of the conversation to Mr. and Mrs. Frisone?           A. Yes, I did.

Mr. Cantillon: I have no further questions.

#### Cross Examination

Q. (By Mr. Jensen): Did you report to Mr. and Mrs. Frisone that the Smiths had told you it could have been '53, '54, or '55?           A. That's right.

Mr. Jensen: I have no further questions.

The Court: All right. You may step down, Mrs. Edwards.

The Witness: Thank you.

(Witness excused.)

The Court: Call your next witness.

Mr. Cantillon: Mr. Frisone. [360]

ANTHONY FRISONE

called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

The Clerk: Your full name?

The Witness: Anthony Frisone.

Mr. Cantillon: Might I have just a moment, your Honor? I am getting my indictments confused.

Direct Examination

Q. (By Mr. Cantillon): Will you state your name, please? A. Anthony Frisone.

Q. And where do you live, Mr. Frisone?

A. Here in Los Angeles.

Q. Whereabouts?

A. On 634 South Gramercy Place.

Q. And what is your occupation?

A. At the present time I am employed by the Grolier Society as a sales manager.

Q. You remember you were on trial here last March? A. Yes, I do.

Q. Now, at that time you were asked the following questions, and gave the following answers:

“Q. Did you ever have an occasion at any time to go to Mr. DiLeo’s establishment in Mexico [361] at Rosarita Beach? “A. Yes, I did. I——”

Did you give such an answer?

A. Yes, I did.

Q. And is it true that you went to Mr. DiLeo’s establishment at Rosarita Beach?

A. Yes, I did.

Q. You were then asked:

“Q. When was that, sir?”

(Testimony of Anthony Frisone.)

And you gave the answer, "I think it was right after the holidays. I can't remember just exactly which day it was. I believe it was a day off, or I was due for a day off after the new year had started, and I drove down—well, Mr. DiLeo had called me and told me he was in operation and that would I come down and look it over and see if—bring the gambling into the club, so I said, 'Well, I'll see if I can come down and look it over.' "

Did you testify to that?           A. Yes, I did.

Q. And is that true?

A. Yes, that's true.

Q. There was more to the answer than appears in the indictment. I will read the balance of the answer:

"Well, after work one evening I drove down and I tried to locate him at his home in San Diego. [362] I finally located the street, but there was no one at home. I then proceeded to drive over to Tijuana where I ate some breakfast and I think I went out to Mi Rancho after breakfast. There I talked to him about this."

Is that true?           A. That is true.

Q. You were then asked this question:

"Q. Isn't it true that you actually spent some few days at Mi Rancho between Christmas and New Year's of 1954?"

And you answered, "It is not."

Now, is it true that you did not spend some few days at Mi Rancho between Christmas and New Year's Eve in 1954?



(Testimony of Anthony Frisone.)

A. I did not spend any few days at Mi Rancho in 1954.

Q. You were then asked the following question, to which you gave the following answer:

“Q. Directing your attention to 1954, and particularly the month of December, what was your occupation at that time?”

“A. At that time I was employed as a bartender by the La Madelon, Inc., here in Los Angeles.”

Is that true?           A. That is true.

Q. The next question you were asked was: [363]

“Q. Now, where were you between the week of from December 24, 1954, to January 1, 1955?”

And you answered, “Well, during the evenings I was employed, still employed by the La Madelon as a bartender, and I went to work generally, I think it was about 9:00 o’clock in the evening or might have been one or two evenings a week that I would go in at 8:00, which we called an early shift, but Christmas—no, I worked Christmas, New Year’s Day, which would be January the 1st of 1955, I was at my mother’s house in San Bernardino. The rest of the time I worked.”

Now, is that true?           A. That is true.

Q. You were asked the question:

“Q. I see. Now, you worked then, Mr. Frisone, at La Madelon from some time at the end of August or sometime in August of 1954 until sometime in March of 1955?”

And you gave the answer, “March or April.”

Is that true?           A. That is true.

(Testimony of Anthony Frisone.)

Q. You were asked the question:

“Q. And you recall definitely now that Christmas Day you worked at La Madelon?”

And you gave the answer, “I don’t know about Christmas Day.” [364]

Then you were asked the question, “Christmas night?”

And you gave the answer, “Christmas night, yes.”

Then you were asked the question, “Do you recall that definitely?       “A. Yes.

“Q. Could it have been Christmas Eve?

“A. Well, wait a minute. Let’s get this straight. When you say Christmas night, which do you mean, Christmas Eve or Christmas Day night?

“Q. I take it in the common meaning, sir. I mean the night of Christmas Day is Christmas night.

“A. No. I couldn’t swear positively, but I don’t think that I worked.

“Q. You don’t think that you worked on Christmas Eve?

“A. No, Christmas Day night.

“Q. You didn’t work on Christmas Day night?

“A. That’s right.

“Q. Did you work the following night?

“A. Yes, sir.”

Now, do you recall those questions being asked?

A. I recall the questions being asked, and the answers that you read off are the answers that I gave there in the matter of the testimony.

Q. Are they true answers? [365]

(Testimony of Anthony Frisone.)

A. They are true answers.

Q. Then you were asked, “You have an independent recollection of working that night?”

“A. Well, I wouldn’t say an independent recollection, but I worked throughout the week.

“Q. Can you state positively that you worked on that night in question?”

“A. Yes, I can state positively.

“Q. And the next day would be the 27th of December. Do you have an independent recollection of having worked that night at La Madelon?”

“A. I worked throughout the week. I didn’t take any extra days off other than I had coming to me.

“Q. Do you have an independent recollection of having worked at the La Madelon on the night of December 27, 1954?           “A. Yes.

“Q. You can say that definitely?”

“A. I would say that I worked there on December 19th—27, 1954.”

Now, do you recall what you meant to convey when you gave the answer, “I would say that I worked there on December 19th—27, 1954,” or do you recall that answer specifically?

A. I don’t recall the answer specifically, but I think 1954 was trying to come out of my mouth, and it came out [366] before “27,” and then I switched. I wouldn’t say for sure.

Q. (Reading):

“Q. You can say definitely that you did?”

“A. As best as I can remember.”

(Testimony of Anthony Frisone.)

Now, do you remember those questions being asked, and do you remember those answers being given?      A. Yes, sir.

Q. Were those answers true?

A. Those answers were true.

Q. Now, the next question, "I appreciate your difficulty, but I am asking, can you remember definitely?"

And your answer, "When you say 'definitely' just exactly what do you mean? That is not very clear, by your definition of 'definitely'; might be a little different than mine.

"Q. Do you have any independent recollection at this time of having worked on that night?

"A. Yes.

"Q. Do you have an independent recollection of having worked the night of December 28, 1954?

"A. Yes.

"Q. Can you say definitely that you did?

"A. Yes.

"Q. Do you have an independent recollection of having worked the night of December 29, 1954?

"A. Yes.

"Q. You can say definitely that you worked that night?

"A. Yes, I can say definitely I worked that night.

"Q. Do you have any independent recollection of having worked the night of December 30, 1954?

"A. Yes.

"Q. Definitely you can say that you did?

(Testimony of Anthony Frisone.)

“A. I definitely can say that I worked December 30th, which would be New Year’s Eve of 1954.”

Then the question, “I am sorry. I thought December 31st would be.”

And your answer, “If December 30th was the New Year’s Eve, that’s the day I worked and I worked the day before it, so that makes it a definite proposition about December 30th.”

Now, did you give those answers to those questions?       A. I did.

Q. Are they true answers?

A. Those are true answers.

Q. Now, you were asked the following questions, to which, Mr. Frisone, you gave the following answers:

“Q. Let me ask you this: At the time that this took place in December of 1954, did you know [368] your present wife, Nora, at that time?”

“A. I had met her. I had seen her. I think I had met her. I had seen her.

“Q. In December of 1954?”

“A. Somewhere about that time.

“Q. And you would say then that around the first of the year of 1955 your acquaintance with her was casual?”

“A. No. After the first of the year of 1955—I don’t know what the—exactly the date, but we started going out together.”

Did you give those answers?

A. Yes, I did.

(Testimony of Anthony Frisone.)

Q. Now, you were asked these questions:

“Q. In mid-December of 1954, did you know your present wife at that time?”

“A. I was acquainted with her. I had seen her.

“Q. Had you ever dated her at that time?”

“A. No.

“Q. Had she ever been in your automobile at that time?”

“A. I loaned my car out to several people while I was working. I couldn't say whether she had been or had not been. I don't know who took—— [369]

“Q. Had she been in it while you were with her?”

“A. No, not while——”

Now, are those true answers, that is, insofar as they purport to convey that you knew your wife only casually in December of 1954?

Mr. Jensen: Well, if the court please,——

The Court: Strike out everything after, “Are those true answers?” Afterwards he can explain the answer. You cannot put into a question what he purported to convey. If he wants to explain his answer, and that goes to his intent.

Mr. Cantillon: Then may I approach the bench? I don't think we need the reporter. I just want to make one point clear.

(Discussion between court and counsel at the bench off the record.)

The Court: Let the record show that counsel requested that the discussion, being merely a matter of technique, not be taken down by the reporter. All right.

(Testimony of Anthony Frisone.)

Q. (By Mr. Cantillon): You recall all of those questions and answers that I just listed for you?

A. Yes, I recall them.

Q. Now, are the answers true?

A. At the time I gave those answers, I believed them to be true. [370]

Q. Now, you know them to be otherwise at this time?

A. Yes, I know them to be otherwise at this time, for the simple reason that—well, in order to—there is a series of events that leads up to this.

Q. Let me ask you this: How do you know them to be false at this particular time?

A. Primarily, from the records of the gas company and the light company that were produced at this particular trial. Now,—

Q. Now, why did you believe these statements to be true at the time that you made them?

A. Because at the time that I made those statements I was under indictment, and I was to appear in court here on a previous trial, and I was trying to establish time; in other words, to find out when I had started living with my present wife, when our acquaintance began, where we had lived, when we became intimate, and several other different things.

Q. Now, with whom did you discuss, if you discussed with anyone,—strike that.

Did you talk to anybody at all in attempting to fix this time?

(Testimony of Anthony Frisone.)

A. Yes, I did. I talked to several people.

Q. Did you talk to me?

A. Yes, I talked to you. [371]

Q. Directing your attention to Defendants' Exhibit F, for identification, and particularly page 2 thereof,——

Mr. Jensen: If the court please, this is the item that was offered earlier today and refused by the court.

The Court: I don't remember that.

Mr. Cantillon: That is the United States Attorney's trial memorandum, your Honor.

The Court: I do not know how he can be examined as to a memorandum filed in the other case.

Mr. Cantillon: I don't know whether I have even asked the question yet.

The Court: What?

Mr. Cantillon: I don't think I have asked a question yet. I just told him to look at it.

The Court: But I don't see how he can be examined at all as to a document which has not been introduced in evidence and which is merely a memorandum.

Mr. Cantillon: If he looked at that memorandum in connection with refreshing his recollection as to the events as to which he testified at the last trial, and if he took that memorandum and its allegations into consideration, then I think he can properly testify to that.

The Court: If that be a fact, he should not be



(Testimony of Anthony Frisone.)

shown the memorandum. He can testify what made him think that. You can ask him, because when intent is a matter involved, [372] he can tell what made him think the date was right. If he should say he was misled by the statement of the United States Attorney, which he saw, let him say so, and it is up to the jury.

Mr. Cantillon: That is what I was trying to get at.

The Court: Let him do it himself. Let him give his reasons. He can bring in his reasons. The thing is you are trying to put it in the other way. Let him give the reasons, and not show him the document. You see, that would not make it admissible either.

Mr. Cantillon: I wasn't offering it.

The Court: The objection will be sustained. You may ask him for his reasons. He had started to give the reasons.

Mr. Cantillon: May I have the last question, please?

(The portion of the question was read.)

Mr. Cantillon: I had better complete my question, your Honor, so that I can have my record.

The Court: Yes, you may complete it.

Q. (By Mr. Cantillon): (Continuing)—did you discuss with me the contents of that document, and particularly the portion thereof that I referred to?

Mr. Jensen: Just a moment. I will object, that that is irrelevant and immaterial, if the court please.

The Court: I will sustain the objection.

(Testimony of Anthony Frisone.)

Q. (By Mr. Cantillon): Whom, other than myself, did [373] you speak to, if you spoke to anyone else, concerning fixing a time for your meeting and becoming intimate with your present wife?

A. Well, I not only spoke to people,—I spoke to my wife, I spoke to my brother, I read documents there were presented to me in the form of indictments and pretrial—I don't know the correct term for it—allegations, what the District Attorney was going to intend to prove, and different times and dates that he contended that I was somewhere, and we were in complete disagreement—my wife, and myself, and even my brother—so at your suggestion we hired——

The Court: Mrs. Edwards?

The Witness: ——Mrs. Edwards to go out and try to establish the correct time that I had lived with my present wife on Lexington Avenue.

This she did, and came back and talked to me about it, and told me what Mr. and Mrs. Smith had told her.

From this, from talking to my wife, and from talking to my brother, from trying to put events in their proper places, and reading different material, this is how it came about.

Q. (By Mr. Cantillon): Whom did you talk to, other than your wife, and your brother, and Mrs. Edwards? Name the other people.

A. Well, I talked to Leola Gerson, I talked to George [374] Redman, I talked to Rudy, I talked to Paul Mandell—no, I take that back. Not at that

(Testimony of Anthony Frisone.)

time I never talked to Paul Mandell, because he wasn't even here. I talked to another girl, Shirley Von Shenk, who was a waitress at the La Madelon.

I talked to several other bartenders who were at the La Madelon at the same time that I was. In other words, in my own mind I made a sincere effort to establish time and place.

I knew that I—the first place that I lived with my wife was the first time that I became real intimate with her.

Q. Let me ask you this: Mrs. Edwards testified that she told you that the Smiths could not remember whether your residence with them was in 1953, 1954, or 1955. Did the year 1953 have any significance to you concerning that prior case at the time that she made that report to you?

A. No, because I wasn't even in Los Angeles in 1953. If I was, it was an occasional visit.

Q. At that particular time was there any question in your mind concerning whether or not you had commenced intimacies with your present wife in the year 1953?

A. None whatsoever.

Q. Had you read any document purporting to accuse you of that?

A. That is a pretrial statement, I think it is called.

Q. A pretrial statement? [375]

A. I think that is what it is called. I don't know exactly what it is, the correct terminology, but it was something sent out by the United States District Attorney's office, on what day they were al-

(Testimony of Anthony Frisone.)

leging what I had done at certain dates, which included 1953 and 1954.

The Court: Did I understand you to say that you didn't remember that you had gas and lights in the place until the records were produced here?

The Witness: I honestly did not remember, your Honor, because I must have lived—I always lived in a furnished apartment. Generally the lights and the gas are provided and figure in in the amount of the rent.

Well, since 1954 I venture to say I have lived in almost—especially the last year, because I have been traveling for this company, in over a hundred places. That is quite a lot of moves.

The Court: I see. They publish books, don't they,—the Grolier Company?

The Witness: The Grolier Society. They publish the Book of Knowledge, that is one, and I work for that division. They also publish the Americana.

The Court: All right.

Mr. Cantillon: I don't believe I have anything further, your Honor.

The Court: All right, Mr. Jensen, let's go on.

#### Cross Examination

Q. (By Mr. Jensen): Mr. Frisone, you said that the testimony to the effect that you did not spend some few days at Mi Rancho between Christmas and New Year's was correct. Let me ask you this: Were you there opening night?

(Testimony of Anthony Frisone.)

A. I don't even know when opening night was.

Q. Were you down there at any time between Christmas and New Year's of 1954?

A. I can't state that definitely. I think I made that statement before. I was down there once. I know it was during the holidays, or after the holidays. I think it was after the holidays, but I can't state definitely. It's four years ago now, and at the time I was on trial it was three years ago.

The Court: Pardon me. I didn't mean to interrupt but you didn't tell us. You say you visited one day there?

The Witness: I didn't say one day, your Honor. I said I had been down to Mi Rancho one time.

The Court: You told us something about breakfast.

The Witness: I had breakfast in Tijuana.

The Court: You went down there, and I don't remember you telling your counsel how long you stayed that day. Did you?

The Witness: I didn't stay very long. [377]

The Court: Did you leave the same day?

The Witness: Yes, I left there---

The Court: Did you make that statement a little while ago from the stand?

The Witness: It is in the record of the last trial, your Honor.

The Court: No, I am not talking about the last trial. I wasn't at the last trial. I didn't preside.

The Witness: I know.

The Court: What I am talking about is, I didn't

(Testimony of Anthony Frisone.)

hear you say when you left. I remember your saying that you had breakfast in Tijuana, and then drove down.

The Witness: They didn't ask me that question.

The Court: They didn't ask you. All right. Then you left the same day?

The Witness: I certainly did.

The Court: All right. Go ahead.

Q. (By Mr. Jensen): Mr. Frisone, in December of 1954 did you own a blue Plymouth station wagon? A. I did.

Q. And you say that you were not asked specifically whether or not you were down there between the holidays or afterwards?

A. I didn't say that. I said I don't remember just exactly when, but as clear as I can define it, it was after [378] the holidays.

Q. Let me ask you this,—

The Court: When you say "holidays," you mean Christmas and New Year's Eve?

The Witness: Christmas and the new year.

The Court: Or just Christmas itself?

The Witness: Christmas and the new year.

The Court: I see. So when you say "after the holidays," it would be after the new year?

The Witness: After the new year.

The Court: After the new year. All right.

Q. (By Mr. Jensen): Were you ever down there late in the evening, when there was a big crowd of people there, people from the states, a lot of girls around, a lot of drinking? I am not talk-

(Testimony of Anthony Frisone.)

ing about the police officers or Mexican officials now, but when a party was going on? Were you ever at Rosarita Beach at Mi Rancho under those kind of circumstances.

A. Well, let me put it to you this way,---

Q. Can't you answer me "Yes" or "No"?

A. No, I cannot answer "Yes" or "No" to that question. You say late at night. What do you mean by late at night?

Q. I am sorry. Let me rephrase my question. In the fall or winter months of 1954 or 1955, were you ever at Mi Rancho in the evening hours, say, from 6:00, 7:00, 8:00, 9:00, 10:00 o'clock on up to midnight, at Mi Rancho now, where a [379] party was going on, there were a number of guests present, drinks were being served, there were a number of girls present, and it was in the nature of a celebration. Were you ever present at Mi Rancho under such circumstances?

A. Not in 1954, to the best of my knowledge.

Q. And not in 1955 either?

A. I was down there at one time, and as best as I can recollect, it was in 1955. It was after the new year. It was an occasion—everything is an occasion at the La Madelon—there was a lot of shooting when I came down there.

Q. Just a minute. I am talking about Mi Rancho.

A. I am talking about Mi Rancho also.

Q. You mentioned La Madelon.

A. No. I am sorry.

(Testimony of Anthony Frisone.)

Q. You misspoke yourself. Mr. Frisone, at the time you were down there in January of 1955, were there a number of guests, and were drinks being served, were there a lot of girls present?

A. There was a lot of commotion.

Q. I didn't ask you that. Would you answer my question, please?

A. Would you repeat the question?

The Court: Read the question.

(The question was read.)

The Witness: There were girls present. There were men [380] present.

Q. (By Mr. Jensen): Were drinks being served?

A. Not to my knowledge.

Q. Was the place in operation?

A. I don't know whether it was in operation. Peter DiLeo told me it was.

Q. How long did you work for La Madelon?

A. For almost a year, to the best of my recollection.

Q. And when did you start? When did your employment start?

A. Well, at the last trial——

Q. I am sorry.

The Court: No, no. Please answer. He has a right to a definite answer, and then you may explain later on. You have a very competent lawyer, and don't try to argue your case.

Q. (By Mr. Jensen): Would you tell me——

The Court: Answer the question. Read the question.



(Testimony of Anthony Frisone.)

Mr. Jensen: I will withdraw that question, your Honor, and, if I may, rephrase it.

The Court: All right.

Q. (By Mr. Jensen): Mr. Frisone, will you tell me when you commenced your employment as a bartender at La Madelon?

A. In 1954, to the best of my knowledge.

Q. What month? [381]

A. I don't remember exactly what month.

Q. How long did you work for them?

A. About a year.

Q. Was that continuous?

A. That was continuous.

Q. Were you paid by check?

A. Not at all times.

Q. Did you go for months at a time without being paid by check? A. Yes.

Q. Do you recall going from September of 1954 through the first part of January of 1955 without receiving your pay in a check?

A. I received my pay. I couldn't swear definitely whether it was in a check, whether it was in whiskey, whether it was in groceries, or just what it was. There were several different ways of being compensated at the La Madelon.

Q. What is your memory about your going that length of time without ever having received a pay check in check form—your pay in a check?

A. This is four years ago.

Q. Well, what is your memory about it?

A. I can't remember definitely. There was

(Testimony of Anthony Frisone.)

times when I received checks. There was times when I didn't receive [382] checks, and sometimes they ran for long periods of time, either way.

Q. Would you explain to me, Mr. Frisone, how you expected other people to recall when you became intimate with your wife, and you couldn't remember your own intimacy with her as to the date?

A. To the best of my knowledge,—you are asking me to recall, is that right?

Q. No, I am asking you why you thought other people would recall it better than you.

A. Well, because I was not definite in my own mind.

Q. You were the man who was intimate with her, weren't you?

A. I have been intimate with a lot of girls besides my wife, before I met her.

Q. Did you ever live with any of them for four months?      A. Possibly longer.

Q. I take it, you felt satisfied when Mrs. Edwards told you that you could have lived with the Smiths in 1953, 1954 or 1955,—you felt satisfied on the basis of that information to come in here and testify that your intimacy did not commence with your wife until 1955?      A. I wasn't satisfied.

Q. Why did you so testify, then?

A. Well, because, due to the fact that the indictment [383] which was handed me was marked in 1953 and 1954, which stated these times.

I knew I hadn't been, to the best of my knowledge

(Testimony of Anthony Frisone.)

at the time of the trial, I hadn't been in Los Angeles in 1953. If I had, it had only been periodic, for a day or two in and out, or for a visit. I won't say for sure, and that is still a long time to be able to be positive.

In 1954 some time I started working at the La Madelon. Previous to working at the La Madelon, I believe I lived in San Bernardino or Las Vegas.

Now, when she mentioned winter, that was brought out by Mrs. Smith to me, there was only one winter which I was here, which could have been '54-'55. That along with my wife--talking to my wife, and talking to my brother, and talking to Mrs. Gerson, and talking to several other people is how I established those facts in my own mind, and up until those records were presented here, I firmly believed in my own mind that what I said was true at the trial, and up until yesterday or the day before I still held it to be true. Since then I have found out I am in error.

Q. I take it, then, since yesterday or the day before, when the Government introduced that testimony, you couldn't of your own recollection recall within four months when you started living with your present wife?           A. No. [384]

Q. By the way, you were not in 1954 employed by the Grolier Society, were you?

A. No, I was not.

Mr. Jensen: I have no further questions.

The Court: Any redirect?

(Testimony of Anthony Frisone.)

Redirect Examination

Q. (By Mr. Cantillon): When did you become employed—

The Court: I beg your pardon?

Mr. Cantillon: I was just asking the question, your Honor.

Q. When did you become employed by this Society? How long have you worked for them?

A. Approximately about a year. I think it was last June I went to work for them, June of 1957.

Q. Let me ask you, did you work more than one New Year's Eve at the La Madelon?

A. No, I did not.

Q. Do you have any special recollection of New Year's Eve, working there, or any sums of money that were earned? A. Yes, I do.

Q. What do you remember earning?

A. Well, I worked with Roy Martin on New Year's Eve. It was the biggest time at any time that I have tended bar, [385] that we cut up tokens or tips, you can call them either one. We used two large mixing cans, and we split \$180.

Q. You definitely recall that?

A. I definitely recall it. As a matter of fact, one of the owners said, "We'll trade you what you have got in the mixing cans for the register."

Q. The next question is, how did it get from the register to the mixing cans?

A. They are known as tips.

Q. Let me ask you this, which I neglected to ask you on direct: What sort of an operation was this

(Testimony of Anthony Frisone.)

La Madelon? Was it a well organized or a somewhat disorganized nightclub operation?

Mr. Jensen: If the court please, that is immaterial and irrelevant.

The Court: He can describe what he found it to be there, but to ask him to characterize it one way or the other is not proper.

Mr. Cantillon: I will withdraw the question, your Honor.

Q. Will you describe the operation during the time you were in there, as to employees, and employers, and so forth.

A. Well, there was——

Mr. Jensen: Pardon me. If the court please, that is immaterial and irrelevant, and I object to it on that ground. [386]

The Court: It is—well, I will not say anything. There has been some testimony given by the first witness as to the method of operation, and so forth, and I think——

Mr. Jensen: She testified about an operation in February. I didn't object at that time.

The Court: But she told about the way it was run.

Mr. Jensen: There is no issue involved here how they operated the La Madelon.

The Court: It may bear upon the question of whether——

Mr. Cantillon: As to his employment, your Honor.

The Court: ——whether payment was always

(Testimony of Anthony Frisone.)

made by cash, or in any other manner, and it may bear upon that,—the manner in which a place is run. We have testimony to the effect that everything earned by employees was paid by check, and, on the contrary, this witness testified that he was paid in cash, so I think that will bear upon the matter.

Go ahead, just in that sense. We are not interested in anything else, you know.

The Witness: Well, while I was working at the La Madelon—I was hired by Paul Mandell or Paul Cuccia—it was always in a state of confusion.

Q. (By Mr. Cantillon): What about the finances?

A. Between partners, between finances, between who was going to steal for who.

Q. Who were the various owners while you were there? [387]

A. When I first went to work there, Paul Mandell was an owner, Stan Mattoon was an owner, and then there was a fellow that was back East that was not resident. I believe it was some time in August or September that Jack Cawood became an owner. He bought out the eastern owner. Some time in December the joint—the nightclub—excuse me, your Honor, I was going to say “joint”—the nightclub was in the process of being sold, or it was sold. It was sold a couple of times while I was employed there. One time——

Q. Was this while Mr. Mattoon was there, when it was sold a couple of times?

(Testimony of Anthony Frisone.)

A. He was there each time.

Q. And what about his sobriety? Was he sober?

A. I can't say that I ever seen him sober outside of today.

Q. And what about these bartenders, was there only you and Mr. Martin as bartenders there, or were there a lot of other people tending bar?

Mr. Jensen: If the court please, this is all leading and suggestive, and not proper redirect.

The Court: I know it isn't redirect, but he may ask him.

The Witness: I will say during the period of time that I worked there, there must have been at least a dozen or two dozen bartenders. Anybody was a bartender. Anybody that wanted to work for nothing at the La Madelon was welcome to go [388] to work there.

The Court: A lot of volunteers; is that it?

The Witness: They were glad to get cheap help. They didn't even pay union scale to their bartenders.

Q. (By Mr. Cantillon): Can you name some of the people? A. Yes, I can.

Q. All right. Name them.

A. As bartenders, there was myself, Peter Di-Leo, Jack Cawood, Stan Mattoon, Rudy Pepillo, Bill Rose, Roger Gilmore, or something to that effect, Pat Caliendo, a fellow by the name of Joe, another fellow by the name of Sam, another fellow by the name of Stan, Sol——

Q. Roy Martin? A. Roy Martin.

(Testimony of Anthony Frisone.)

The Court: All right.

The Witness: And several others.

Mr. Cantillon: I have nothing further.

#### Recross Examination

Q. (By Mr. Jensen): Mr. Frisone, how is it you can remember the details and the dates on the financial arrangements and the ownership of the La Madelon, and all the bartenders that were there, and you couldn't remember the date that you first started [389] living with your wife?

A. I didn't recall any specific dates of the financial arrangements.

Q. Didn't you state that the ownership transferred in August?

A. I said it was sold a couple of times, I believe once in August, while I was work there, which was one period of time. I had been going with my wife for a long time before I even married her, which was an on and off romance.

Mr. Jensen: I have nothing further.

The Court: All right. Step down.

(Witness excused.) [390]

\* \* \* \* \*



LEO FRISONE

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: Please sit down, sir. What is your full name?

The Witness: Leo Frisone.

Direct Examination

Q. (By Mr. Cantillon): Mr. Frisone, you are related to the defendant Anthony Frisone?

A. Yes, he's my brother.

Q. Where do you reside?

A. I reside in Encino, California.

Q. What is the address?

A. I just moved there a month ago. I think it's 17930—I have it listed. Do you want me to give it to you?

Q. I think you should.

A. 17930 Rosita Street, Encino.

Q. And what is your business or occupation?

A. I'm area manager for three western states for the [412] Grolier Society.

Q. What is that society?

A. We are the publishers and editors of reference material: Book of Knowledge, Americana, Popular Science, Lands and People.

Q. Does your brother Anthony work with you?

A. Yes, he does.

Q. Now, directing your attention to the Christmas season of 1954, where were you living at that time, if you recall?

(Testimony of Leo Frisone.)

A. The best of my recollection, I believe I was in Phoenix, Arizona; I was living in Phoenix, Arizona.

Q. Now, did you have an occasion during the holiday season to be in the County of Los Angeles?

A. You mean in Los Angeles?

Q. Yes. A. What holiday?

Q. The holiday season of 1954.

A. As a general rule, I made it a point to be in Los Angeles——

Q. Well, were you at that particular time? I'm not talking about any other year than '54.

A. Yes, I was.

Q. And do you remember where you were, Christmas day? A. Yes, I was——

Mr. Jensen: I will object to this as being——

The Court: Pardon me?

Mr. Jensen: Your Honor, I think these questions are immaterial and irrelevant unless they have something to do with the issues of the case, which have gone on for some time now without that showing up, and I will object to it on that ground.

The Court: No; I think it bears on the issues. Overruled. Go ahead.

Q. (By Mr. Cantillon): Would you answer that: Where were you on Christmas of that year?

A. Christmas day, I was at my mother's house in San Bernardino.

Q. Was your brother Anthony there?

A. No, he was not.

(Testimony of Leo Frisone.)

Q. Sometime between—or sometime following that date, did you see your brother Anthony?

A. You mean after Christmas?

Q. After Christmas.           A. Yes, I did.

Q. Where did you see him?

A. I saw him at the La Madelon, or this bar or place, La Madelon, on Sunset Boulevard.

Q. And where was he when you saw him there? What was he doing at that time?

A. He was working.

Q. At what? [414]           A. He was a bartender.

Q. And what was your purpose in going to see him?

Mr. Jensen: I object to that as being immaterial and irrelevant.

Mr. Cantillon: It's preliminary, your Honor.

The Court: I will sustain the objection.

Q. (By Mr. Cantillon): Well, did you have a conversation with your brother when you saw him?           A. Yes, I did.

Q. And what was the subject of that conversation?

Mr. Jensen: I will object to that as being immaterial and irrelevant, and, if exculpatory, it would be self-serving.

The Court: Well, I can't see that the conversation has materiality. If he saw him there, that is material, but the conversation he had with him wouldn't be.

Q. (By Mr. Cantillon): Well, did you see him

(Testimony of Leo Frisone.)

—How long did you stay in Los Angeles over that particular holiday season?

A. You mean when I came in?

Q. Yes. A. I only came in to see him.

Q. Well, did you see him again a few days after you saw him at the La Madelon?

A. Yes, I saw him.

Q. Where did you see him?

A. At my mother's. [415]

Q. And do you remember the date that you saw him out there? A. New Year's Day.

Q. That would be January 1, 1955?

A. Yes, sir.

Q. And was this meeting New Year's Day as a result of some conversation you had with him sometime between, after Christmas and before New Year's? A. Yes.

Mr. Jensen: I will object to that as being irrelevant and immaterial, if the court please.

The Court: Well, we don't need to go into it. Overruled.

All right, go ahead.

Q. (By Mr. Cantillon): Was anyone with him when you saw him at your mother's home in San Bernardino on New Year's Day?

A. You mean when he came?

Q. Yes. Was he accompanied by anybody?

A. No. He was alone.

Q. Are you acquainted with the defendant Nora, your brother's wife? A. Yes, I am.

Q. And do you recall when you first met her?

(Testimony of Leo Frisone.)

A. Well, the best of my recollection—and we were trying to establish this, that is——

Q. I'm just asking you if you recall it. We'll get into [416] that in a minute. Do you recall when the first occasion was that you met her?

A. It was after the—after—I would say it was right around Easter time.

Q. Of what year?

A. I believe, 1955. That would be the time in particular that we speak of; you're talking about January 1st, it's the following Easter.

Q. Let me ask you this: You remember when your brother stood trial in the Federal Court here about a year ago, do you?      A. Yes, I do.

Mr. Jensen: Just a moment, please. I lost the question. Might I have that last question read?

(The last question and answer were read.)

Q. (By Mr. Cantillon): Now, you testified at that particular time, did you not?

A. Yes, I did.

Q. Now, prior to that trial, did you have any conversation with your brother on the subject of when he first became acquainted with, or when he first started going with and when he first became intimate with the co-defendant, now his wife, Nora Frisone?

A. Yes, we did. We discussed it at length.

Q. And where did these conversations take place?

A. Well, they took place at my home; they took

(Testimony of Leo Frisone.)

place at [417] his home. We were trying to establish a——

Q. Let me ask you—you've fixed the location: Now tell me what you and your brother said on this subject, and what anyone else said that was present in the conversation, confining it to this particular subject.

A. You mean about the time that he——

Q. He first met his present wife.

A. Well, he felt that——

Mr. Jensen: Just a moment. If the court please, I will object, that it's hearsay and that it's self-serving. I think the fact of the conversation is pertinent. I think otherwise it's immaterial and irrelevant.

The Court: I will sustain the objection. Any statement that the defendant made to him would be immaterial.

Q. (By Mr. Cantillon): Will you state, then, Mr. Frisone, what you stated to your brother on that particular subject at these conversations?

A. Well, I told him that I had no recollection of him ever knowing Nora, he never mentioned her to me, and that I met her at Easter. And my brother and I are comparatively close——

Q. Now, that isn't the question.

A. Well, I'm trying to establish the reasoning——

Q. Well, Mr. Frisone, you can't establish anything. You just tell us what you said to your brother.

(Testimony of Leo Frisone.)

A. Well, that I had met her at Easter time; therefore, he [418] had never made any mention to me about her, and he assumed that he had been going to——

Q. Well, is that about the substance of what you said?

A. Well, you haven't given me a chance to say anything about——

The Court: Well, because that's not material. Only what you said is material.

Q. (By Mr. Cantillon): You've told us generally what you said.

The Court: You've already told us that.

The Witness: Well, I told him that I had met Nora about that time. And I believe that he established the date——

Q. (By Mr. Cantillon): No. We are not asking you what he established.

Is that the substance of what you said? Yes or no.

A. You mean at the discussions?

Q. Yes.

A. There were several. At this particular time, I would say, yes. Now, the particular time, I don't know, but at that—what we have reference to.

Mr. Cantillon: I have nothing further.

The Court: All right.

#### Cross Examination

Q. (By Mr. Jensen): Just one or two questions, Mr. Frisone. [419]

Were you instrumental in securing your brother's present employment? A. Yes, I was.

(Testimony of Leo Frisone.)

Q. Do you have a feeling of looking after him or trying to help him out?      A. I have not.

Q. I take it from your testimony that you didn't know these two people were living together in September, October, and November and December of 1954?

The Witness: Would you repeat that again, please?

Mr. Jensen: I will withdraw it and rephrase it.

Q. I take it that you did not know, at the time of these discussions and prior to that other trial that Nora and Anthony had been living together, in September, October, November, and December of 1954?

A. I did not, and I don't believe my brother did, either, at the time we were discussing it.

Mr. Jensen: I have no further questions.

The Court: All right. All right, Mr. Frisone, step down.

All right, call your next witness.

Mr. Cantillon: Mr. Frisone.

#### ANTHONY FRISONE

a defendant herein, called as a witness in his own behalf, having been first duly sworn, was examined and testified as [420] follows:

The Clerk: Your full name?

The Witness: Anthony Frisone.

#### Direct Examination

Q. (By Mr. Cantillon): Mr. Frisone, I'm going



(Testimony of Anthony Frisone.)

to ask you if you have ever suffered from any mental illness in the past.

Mr. Jensen: I'll object to that as being improper and immaterial and irrelevant, if the court please, and without more foundation——

The Court: I cannot see any bearing upon the issue here.

Mr. Cantillon: Well, I'm going to offer to prove, your Honor, that——

Mr. Jensen: If the court please——

Mr. Cantillon: ——he was treated in the Marine Corps.

The Court: No. We don't want to have any offer of proof. There is no plea of insanity here.

Mr. Cantillon: No, it's not based upon that. It's based upon the subject of an honest belief. Recollection; failure of recollection——

The Court: Well, I don't think failure of recollection is a defense on a plea of not guilty in the Federal courts.

Mr. Cantillon: The proposition of his—well, I think I have stated my point. [421]

The Court: All right.

Mr. Cantillon: I have nothing further.

The Court: All right. Step down. [422]

\* \* \* \* \*

## ANTHONY FRISONE

a defendant herein, recalled as a witness in his own behalf, having been previously duly sworn, was examined and testified further as follows:

## Direct Examination—(Continued)

Q. (By Mr. Cantillon): Without going into detail, Mr. Frisone, you testified as alleged in the indictment, at the last trial, and you affirmed it here, that on Christmas night you did not work, that is, Christmas Day night? A. Yes.

The Court: This defendant was a witness before, last week; didn't you put him on last week?

Mr. Cantillon: Yes, I did, your Honor; and I overlooked—and that was one of the reasons I put him back on this morning, and then I——

The Court: I see. All right.

Mr. Cantillon: When your Honor ruled, I just——

The Court: Yes. Go ahead. [423]

Q. (By Mr. Cantillon): How is it that you know that you did not work Christmas Day night of 1954?

A. Because of the records of the Hotel Sahara in Las Vegas, Nevada.

Q. And did you examine those records?

A. Yes, I did.

Q. Did you have a copy of those records made?

A. Yes, I did.

Mr. Jensen: If the court please——

Mr. Cantillon: We will ask that the records I

(Testimony of Anthony Frisone.)

have here, that are stapled, two separate records, one being a registration——

The Clerk: One number or two numbers?

Mr. Cantillon: Two numbers—one being a registration card, No. 9300, of the Hotel Sahara, to be marked defendants' next——

The Clerk: G as in George.

Mr. Cantillon: ——for identificaton.

The Clerk: Defendants' Exhibit G.

(The document referred to was marked as Defendants' Exhibit G for identification.)

Mr. Cantillon: And the statement——

The Clerk: The statement, H.

Mr. Cantillon: ——also numbered 9300, as H for identification. [424]

(The document referred to was marked as Defendants' Exhibit H for identification.)

Mr. Jensen: May I see them, please.

(Documents handed to counsel.)

Q. (By Mr. Cantillon): Do you recall the exact hour that you arrived in Las Vegas and the hour that you left Las Vegas?

A. I don't recall the exact hour.

Q. Let me direct your attention to Defendants' Exhibit G for identification, whereon appears the time, "December 25, 7:12 a.m., '54," and ask you if that refreshes your recollection as to the approximate time you arrived in Las Vegas.

Mr. Jensen: If the court please—I'll withdraw that.

The Court: What is it?

(Testimony of Anthony Frisone.)

Mr. Jensen: I'm sorry, your Honor. I was going to interpose an objection, and I've thought better of it and have withdrawn it.

The Court: All right. Go ahead.

The Witness: Well, I know it was sometime after work, and I was with——

Mr. Jensen: I object to that, your Honor. He is not answering the question.

Q. (By Mr. Cantillon): Did you fly to Las Vegas sometime after work? A. Yes, I did.

Q. Does that refresh your recollection as to about the [425] hour that you arrived there?

A. Yes, it was in the morning sometime.

Q. All right. Now, I show you—do you remember the hour that you left?

A. No. It was in the afternoon sometime.

Q. Well, I show you the statement, Defendants' Exhibit H for identification, and on which appears "December 26th, 4:21 p.m., '54." Does that refresh your recollection as to the approximate time that you left?

A. Yes, it—sometime in the afternoon.

Q. How did you return to Los Angeles?

A. By plane.

Q. And did you work when you came back that night?

A. Yes, I went to work that night.

Mr. Cantillon: Nothing further.

Mr. Jensen: No questions. [426]

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The Court: Are there any objections to the in-

structions given or refused? If so, an opportunity will be given to present them to the court outside the hearing of the jury.

Mr. Jensen: None on behalf of the Government, your Honor.

Mr. Michael Cantillon: Yes, your Honor, I have some exceptions to take, and I have a suggestion, your Honor,——

The Court: Let's not do it in the presence of the jury. Ladies and gentlemen of the jury, it is provided in the law that counsel may indicate either objections or omissions, and unless they do that now, they cannot question the ruling. They are required to present requests, and I have been working on them all day yesterday and today, writing and re-writing, and then after this consultation I will indicate to you whether any changes are to be made in the instructions. [473]

Come up here, counsel. We will stand here.

(Thereupon, the following proceedings were had between court and counsel at the bench, outside the hearing of the jury.)

The Court: I worked awfully hard, gentlemen, to try to harmonize them.

Mr. Jensen: I am fully satisfied with the court's instructions.

Mr. Michael Cantillon: If the court please, this is a State case.

The Court: I am not interested in State cases.

Mr. Michael Cantillon: Well, this case is *United States v. Shellmire* and *People v. Von Tiedman*,

and I request the court to give the following instruction:

“A rash, negligent, or even reckless belief, though voluntary and conscious, and the supposed truth of the matter, though false in fact, is not, in and of itself, a sufficient criminal intent to support a conviction of perjury.”

And I cite *People v. Von Tiedman* and *U. S. v. Shellmire*.

The Court: Well, it comes too late. No such instruction was presented to me earlier, and it comes too late now.

Mr. Michael Cantillon: Then I will request the court to give Defendants' Proposed Nos. 14 and 18, and No. 14 states, “To be given if Government's Requested Instruction No. 5 is [474] given.”

The Court: I gave it right after. Here it is. I gave it right after 5, because I promised I would give it yesterday.

Mr. Michael Cantillon: Is that towards the end?

Mr. Jensen: Well, I will say, your Honor,---

The Court: Just a moment. One at a time. Here, it was read, right in the form in which you have it.

Mr. Michael Cantillon: Very well, your Honor.

Then I except to the instruction wherein your Honor states that an unqualified statement as to the truth of a matter and false in fact is a sufficient criminal intent to support a conviction of perjury.

Could your Honor find that there, so that I could cite it?

The Court: That is modified later on. I will give it to you. You see, I rewrite all of these.

Mr. Michael Cantillon: I see. It was one of the last three or four. Yes, this is it (indicating).

The Court: These two are read together, and you will find that they complement each other.

Mr. Michael Cantillon: I will except to the sixth to the last instruction given by the court.

The Court: Well, the instruction that was given reads as follows:

“An unqualified statement of that which one does not know to be true, and of which he knows himself to [475] be ignorant, is equivalent under the law of perjury to a statement of that which one knows to be false.”

Then that was followed immediately by the statement that this does not dispense with the need of proof. It is merely a general statement of the rule, which is further modified by the particular instruction given, and which followed immediately.

Mr. Michael Cantillon: May I have your Honor's comment on No. 18, your Honor,—Defendants' Proposed No. 18.

The Court: I gave that.

Mr. Jensen: He gave it, or it in substance.

Mr. Michael Cantillon: I will except to that.

The Court: Just a minute.

Mr. Michael Cantillon: I will except as not having been given as presented by the defense.

The Court: I have given this one here half a dozen times. Just a minute. I have given this,

and it has been before the Court of Appeals many time in the form in which it was given.

Mr. Michael Cantillon: Very well, your Honor, just so long as my exception is noted.

The Court: Right here I gave it, practically word for word the way you have it, just before the definition.

Mr. Michael Cantillon: Just as long as my exception is noted. [476]

The Court: That is all right. I am just telling you.

Mr. Michael Cantillon: Could this be filed, your Honor?

The Court: It may be. It can't be filed like this, but you can have it copied into the transcript.

Mr. Michael Cantillon: Could she copy my authorities into the transcript, too?

The Court: If you want it.

Mr. Michael Cantillon: Very well, your Honor.

(The citations referred to are as follows:

“People v. Von Tiedman, 1898, 120 Cal. 128; 52 Pacific 155; and

U.S. vs. Shellmire, 370 Fed., Case No. 16271.”) [477]

\* \* \* \* \*

[Endorsed]: Filed October 29, 1958.



[Endorsed]: No. 16238. United States Court of Appeals for the Ninth Circuit. Anthony Frisone, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: November 3, 1958.

Docketed: November 5, 1958.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for  
the Ninth Circuit.

